

Introduced by Senator Ducheny

February 22, 2005

An act to amend Sections 3040, 3041, 7821, 7822, 8616.5, 8620, 8710, and 9210 of, to add Sections 170, 175, 180, 3041.3, 7892.5, 7907.3, 8619.5, 9208, 9209 to, and to repeal Section 7810 of, the Family Code, to amend Sections 1510, 1511, and 1601 of, to add Sections 1449, 1456, 1457, 1458, 1460.2, and 1474 to, and to repeal Section 2112 of, the Probate Code, and to amend Sections 290.1, 290.2, 291, 292, 293, 294, 295, 297, 305.5, 317, 361, 361.4, 366, 366.26, and 727.4 of, to add Sections 224, 224.1, 224.2, 224.3, 224.4, 224.5, 224.6, 360.8, 361.31, and 361.7 to, and to repeal Section 360.6 of, the Welfare and Institutions Code, relating to Indian children.

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as introduced, Ducheny. Indian children.

Existing federal law, the Indian Child Welfare Act, governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of his or her parent or guardian. Existing law authorizes tribes recognized under federal law to intervene in these proceedings.

Existing provisions of state law govern child custody proceedings, adoption proceedings, including postadoption contact agreements, dependency proceedings, including termination of parental rights, the voluntary relinquishment of a child by a parent, and guardianship proceedings. Existing law recognizes that the Indian Child Welfare Act applies if the subject of these proceedings is or may be an Indian child and specifies conforming procedures in these cases with regard to the right to notice and intervention accorded the child's tribe and the standard of proof applied in evaluating the evidence submitted, among other things.

This bill would revise, recast, and expand various provisions of state law to, among other things, authorize Indian tribes that are not recognized under federal law to intervene in guardianship and child custody proceedings, as specified. These provisions would apply to certain children who do not come within the definition of an Indian child for purposes of the Indian Child Welfare Act but who reside on an Indian reservation or have some other special relationship to a tribe. The bill would require a court to appoint legal counsel to represent an Indian custodian or biological parent of an Indian child in guardianship proceedings if that custodian or parent lacks the financial ability to retain counsel and requests that appointment.

Existing law also requires, until January 1, 2010, a social worker to make a home visit and conduct a criminal records check of persons living in a home before placing the child in the home.

This bill would delete that termination date, thereby making that provision effective indefinitely.

Because the bill would impose additional duties on social workers and other county employees, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 170 is added to the Family Code, to
- 2 read:
- 3 170. (a) As used in this code, unless the context otherwise
- 4 requires, the terms “Indian,” “Indian child,” “Indian child’s
- 5 tribe,” “Indian custodian,” “Indian tribe,” “reservation,” and
- 6 “tribal court” shall be defined as provided in Section 1903 of the
- 7 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

1 (b) When used in connection with an Indian child, the terms
2 “extended family member” and “parent” shall be defined as
3 provided in Section 1903 of the Indian Child Welfare Act.

4 (c) “Indian child custody proceeding” means a “child custody
5 proceeding” within the meaning of Section 1903 of the Indian
6 Child Welfare Act, including a voluntary or involuntary
7 proceeding that may result in an Indian child’s temporary or
8 long-term foster care or guardianship placement if the parent or
9 Indian custodian cannot have the child returned upon demand,
10 termination of parental rights or adoptive placement. An “Indian
11 child custody proceeding” does not include a proceeding under
12 this code commenced by the parent of an Indian child to
13 determine the custodial rights of the child’s parents, unless the
14 proceeding involves a petition to declare an Indian child free
15 from the custody or control of a parent or involves a grant of
16 custody to a person or persons other than a parent, over the
17 objection of a parent.

18 (d) If an Indian child is a member of more than one tribe or is
19 eligible for membership in more than one tribe, the court shall
20 make a determination, in writing together with the reasons for it,
21 as to which tribe is the Indian child’s tribe as follows:

22 (1) If the Indian child is or becomes a member of only one
23 tribe, that tribe shall be designated as the Indian child’s tribe,
24 even though the child is eligible for membership in another tribe.

25 (2) If an Indian child is or becomes a member of more than
26 one tribe, or is not a member of any tribe but is eligible for
27 membership more than one tribe, the tribe with which the child
28 has the more significant contacts shall be designated as the
29 Indian child’s tribe. In determining which tribe the child has the
30 more significant contacts with, the court shall consider, among
31 other things, the following factors:

32 (A) The length of residence on or near the reservation of each
33 tribe and frequency of contact with each tribe.

34 (B) The child’s participation in activities of each tribe.

35 (C) The child’s fluency in the language of each tribe.

36 (D) Whether there has been a previous adjudication with
37 respect to the child by a court of one of the tribes.

38 (E) Residence on or near one of the tribes’ reservations by the
39 child parents, Indian custodian or extended family members.

40 (f) Tribal membership of custodial parent or Indian custodian.

(g) Interest asserted by each tribe in response to the notice specified in Section 224.11.

(h) The child's self identification.

SEC. 2. Section 175 is added to the Family Code, to read:

175. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of recognized Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever the placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether:

(A) The child is in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding.

(B) The parental rights of the child's parents have been terminated.

(C) The child has resided or been domiciled on an Indian reservation.

(b) In all Indian child custody proceedings the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act.

1 (c) A determination by an Indian tribe that an unmarried
2 person, who is under the age of 18 years, is either (1) a member
3 of an Indian tribe or (2) eligible for membership in an Indian
4 tribe and a biological child of a member of an Indian tribe shall
5 constitute a significant political affiliation with the tribe and shall
6 require the application of the federal Indian Child Welfare Act to
7 the proceedings.

8 (d) (1) If the Indian Child Welfare Act applies to a proceeding
9 under this code, to the extent that this code or the Adoption and
10 Safe Families Act of 1999, (P.L. 105-89) are inconsistent or in
11 conflict with the Indian Child Welfare Act, the provisions of the
12 Indian Child Welfare Act shall prevail.

13 (2) In any case in which this code or other applicable state or
14 federal law provides a higher standard of protection to the rights
15 of the parent or Indian custodian of an Indian child, or the Indian
16 child's tribe, than the rights provided under the Indian Child
17 Welfare Act, the court shall apply the higher standard.

18 (e) Any Indian child, the Indian child's tribe, or the parent or
19 Indian custodian from whose custody the child has been
20 removed, may petition any court of competent jurisdiction to
21 invalidate an action in an Indian child custody proceeding
22 involving the child if the action violated Sections 1911, 1912,
23 and 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901
24 et seq.).

25 SEC. 3. Section 180 is added to the Family Code, to read:

26 180. (a) In an Indian child custody proceeding to which the
27 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies,
28 notice shall comply with subdivision (b) of this section.

29 (b) Any notice sent under this section shall be sent to the
30 minor's parent or legal guardian, Indian custodian, if any, the
31 Indian child's tribe and comply with all of the following
32 requirements:

33 (1) Notice shall be sent by registered or certified mail with
34 return receipt requested, and additional notice by first-class mail
35 is recommended.

36 (2) Notice to the tribe shall be to the tribal chairperson, unless
37 the tribe has designated another agent for service.

38 (3) Notice shall be sent to all tribes of which the child may be
39 a member or eligible for membership until the court makes a
40 determination as to which tribe is the Indian child's tribe in

1 accordance with subdivision (d) of Section 1448, after which
2 notice need only be sent to the tribe determined to be the Indian
3 child's tribe.

4 (4) Notice shall be sent to the Secretary of the Interior's
5 designated agent, the Sacramento Area Director, Bureau of
6 Indian Affairs. When the identity of the tribe of which the child
7 may be a member or eligible for membership in is unknown, the
8 notice provided to the Bureau of Indian Affairs will serve as
9 substitute notice to the child's tribe. If the identity or location of
10 the Indian child's tribe is known, a copy of the notice shall also
11 be sent directly to the Secretary of the Interior if the notice is
12 required under federal law.

13 (5) In addition to the information specified in other sections of
14 this article, notice shall include all of the following information:

15 (A) The name, birthdate, and birthplace of the Indian child.

16 (B) The name of any Indian tribe in which the child is a
17 member or may be eligible for membership.

18 (C) All names known of the Indian child's biological parents,
19 grandparents, and great-grandparents, or Indian custodians,
20 including maiden, married, and former names or aliases, as well
21 as their current and former addresses, birthdates, places of birth
22 and death, tribal enrollment numbers, and any other identifying
23 information.

24 (D) A copy of the petition by which the proceeding was
25 initiated.

26 (E) A copy of the child's birth certificate, if available.

27 (F) The location, mailing address, and telephone number of
28 the court and all parties notified pursuant to this section.

29 (G) A statement listing the rights of the child's parents, Indian
30 custodians, and tribes. The rights shall include all of the
31 following:

32 (i) The right to intervene in the proceeding.

33 (ii) The right to petition the court to transfer the proceeding to
34 the tribal court of the Indian child's tribe, absent objection by
35 either parent and subject to declination by the tribal court.

36 (iii) The right to, upon request, be granted up to an additional
37 20 days from the receipt of the notice to prepare for the
38 proceeding.

1 (iv) A statement of the potential legal consequences of an
2 adjudication on the future custodial rights of the child's parents
3 or Indian custodians.

4 (v) A statement that if the parents or Indian custodians are
5 unable to afford counsel in an involuntary proceeding, counsel
6 will be appointed to represent the parents or custodians.

7 (vi) A statement that the information contained in the notice,
8 petition, pleading, and other court documents is confidential.

9 (6) Notice shall be sent whenever there is reason to believe the
10 child may be an Indian child, and for every hearing thereafter,
11 including, but not limited to, the hearing at which a final
12 adoption order is to be granted. After a tribe intervenes in a
13 proceeding, the information set out in subdivisions (3), (4), (5),
14 and (7) need not be included with notice.

15 (7) Proof of the notice, including copies of notices sent and all
16 return receipts and responses received, shall be filed with the
17 court in advance of the hearing except as permitted under
18 subdivision (h).

19 (8) No proceeding shall be held until at least 10 days after
20 receipt of notice by the parent, Indian custodian, the tribe, or the
21 Bureau of Indian Affairs, except for the detention hearing,
22 provided that notice of the detention hearing shall be given as
23 soon as possible after the filing of the petition initiating the
24 proceeding and proof of the notice is filed with the court within
25 10 days after the filing of the petition. With the exception of the
26 detention hearing, the parent, Indian custodian, or the tribe shall,
27 upon request, be granted up to 20 additional days to prepare for
28 the proceeding. Nothing herein shall be construed as limiting the
29 rights of the parent, Indian custodian, or tribe to more than 10
30 days notice when the lengthier notice period is required.

31 (9) With respect to giving notice to Indian tribes, a party shall
32 be subject to court sanctions if that person knowingly and
33 willfully falsifies or conceals a material fact concerning whether
34 the child is an Indian child, or counsels a party to do so.

35 SEC. 4. Section 3040 of the Family Code is amended to read:

36 3040. (a) Custody should be granted in the following order of
37 preference according to the best interest of the child as provided
38 in Sections 3011 and 3020:

39 (1) To both parents jointly pursuant to Chapter 4 (commencing
40 with Section 3080) or to either parent. In making an order

1 granting custody to either parent, the court shall consider, among
2 other factors, which parent is more likely to allow the child
3 frequent and continuing contact with the noncustodial parent,
4 consistent with Section 3011 and 3020, and shall not prefer a
5 parent as custodian because of that parent's sex. The court, in its
6 discretion, may require the parents to submit to the court a plan
7 for the implementation of the custody order.

8 (2) If to neither parent, to the person or persons in whose
9 home the child has been living in a wholesome and stable
10 environment.

11 (3) To any other person or persons deemed by the court to be
12 suitable and able to provide adequate and proper care and
13 guidance for the child.

14 (b) This section establishes neither a preference nor a
15 presumption for or against joint legal custody, joint physical
16 custody, or sole custody, but allows the court and the family the
17 widest discretion to choose a parenting plan that is in the best
18 interest of the child.

19 (c) *Notwithstanding subdivisions (a) and (b), if the child is an*
20 *"Indian child" within the meaning of the Indian Child Welfare*
21 *Act (25 U.S.C. Sec. 1901 et seq.), or the court has reason to know*
22 *the child may be an Indian child, before making an order*
23 *granting custody to a person or persons other than a parent, over*
24 *the objection of a parent, the court shall apply the placement*
25 *preferences and standards set out in Section 361.31 of the*
26 *Welfare and Institutions Code.*

27 SEC. 5. Section 3041 of the Family Code is amended to read:

28 3041. (a) Before making an order granting custody to a
29 person or persons other than a parent, over the objection of a
30 parent, the court shall make a finding that granting custody to a
31 parent would be detrimental to the child and that granting
32 custody to the nonparent is required to serve the best interest of
33 the child. Allegations that parental custody would be detrimental
34 to the child, other than a statement of that ultimate fact, shall not
35 appear in the pleadings. The court may, in its discretion, exclude
36 the public from the hearing on this issue.

37 (b) Subject to subdivision (d), a finding that parental custody
38 would be detrimental to the child shall be supported by clear and
39 convincing evidence.

(c) As used in this section, “detriment to the child” includes the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of his or her parent, fulfilling both the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment does not require any finding of unfitness of the parents.

(d) Notwithstanding subdivision (b), if the court finds by a preponderance of the evidence that the person to whom custody may be given is a person described in subdivision (c), this finding shall constitute a finding that the custody is in the best interest of the child and that parental custody would be detrimental to the child absent a showing by a preponderance of the evidence to the contrary.

(e) *Notwithstanding subdivisions (a) to (d), inclusive, if the child is an “Indian child” within the meaning of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), or the court has reason to know that the child may be an Indian child, when an allegation is made that parental custody would be detrimental to the child, before considering the allegation and making an order granting custody to a person or persons other than a parent, over the objection of a parent, the court shall apply the act, including, but not limited to, subdivision (c) of Section 1911 and Sections 1912, 1914, and 1915 of the Indian Child Welfare Act. When the Indian Child Welfare Act applies to a proceeding under this division, the court shall apply Sections 224.2 to 224.6, inclusive, and Sections 305.5, 361.31, and 361.7 of the Welfare and Institutions Code, and the following rules from the California Rules of Court, as they read on January 1, 2005:*

(1) Rule 1410, subdivision (b)(7).

(2) Rule 1412, subdivision (i).

(3) Rule 1439.

SEC. 6. Section 3041.3 is added to the Family Code, to read:

3041.3. (a) Before making an order granting custody to a person or persons other than a parent, over the objection of a parent, if a proceeding involves a child who is not an Indian child, the court may recognize the child’s tribe and grant standing to participate as a party in the proceeding either of the following applies:

1 (1) The child is not eligible for membership in his or her tribe
2 but is the biological grandchild of a member of the tribe or
3 resides or is domiciled within the boundaries of an Indian
4 reservation.

5 (2) The child or his or her biological parent or grandparent is a
6 member of a tribe that is not recognized as eligible for the
7 services provided to Indians by the Secretary of the Interior but
8 the tribe, band, or nation is recognized as an Indian tribe by any
9 state or local governmental entity or by Canada or any of its
10 provinces.

11 (b) If the court recognizes the child is tribe and grants standing
12 to the tribe to participate as a party to the proceeding, the tribe
13 may do all of the following:

14 (1) Be present at the hearing.

15 (2) Be represented by retained counsel or a representative of
16 the tribe designated by the tribe to intervene on behalf of the
17 tribe, provided that when the tribe appears as a party by a
18 representative of the tribe, the name of the representative and a
19 statement of authorization for that individual to appear on behalf
20 of the tribe shall be submitted to the court in the form of a tribal
21 resolution or other document evidencing an official act of the
22 tribe.

23 (3) Address the court.

24 (4) Receive notice of hearings.

25 (5) Examine all court documents relating to the proceeding.

26 (6) Present evidence.

27 (7) Submit written reports and recommendations to the court.

28 (8) Perform other duties and responsibilities as requested or
29 approved by the court.

30 SEC. 7. Section 7810 of the Family Code is repealed.

31 ~~7810. (a) The Legislature finds and declares the following:~~

32 ~~(1) There is no resource that is more vital to the continued~~
33 ~~existence and integrity of recognized Indian tribes than their~~
34 ~~children, and the State of California has an interest in protecting~~
35 ~~Indian children who are members of, or are eligible for~~
36 ~~membership in, an Indian tribe.~~

37 ~~(2) It is in the interest of an Indian child that the child's~~
38 ~~membership in the child's Indian tribe and connection to the~~
39 ~~tribal community be encouraged and protected.~~

1 ~~(b) In all Indian child custody proceedings, as defined in the~~
2 ~~federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.),~~
3 ~~the court shall consider all of the findings contained in~~
4 ~~subdivision (a), strive to promote the stability and security of~~
5 ~~Indian tribes and families, comply with the federal Indian Child~~
6 ~~Welfare Act, and seek to protect the best interest of the child.~~

7 ~~(e) A determination by an Indian tribe that an unmarried~~
8 ~~person, who is under the age of 18 years, is either (1) a member~~
9 ~~of an Indian tribe or (2) eligible for membership in an Indian~~
10 ~~tribe and a biological child of a member of an Indian tribe shall~~
11 ~~constitute a significant political affiliation with the tribe and shall~~
12 ~~require the application of the federal Indian Child Welfare Act~~
13 ~~(25 U.S.C. Sec. 1901 et seq.) to the proceedings.~~

14 SEC. 8. Section 7821 of the Family Code is amended to read:
15 7821. A finding pursuant to this chapter shall be supported by
16 clear and convincing evidence, *except as otherwise provided*.

17 SEC. 9. Section 7822 of the Family Code is amended to read:

18 7822. (a) A proceeding under this part may be brought where
19 the child has been left without provision for the child's
20 identification by the child's parent or parents or by others or has
21 been left by both parents or the sole parent in the care and
22 custody of another for a period of six months or by one parent in
23 the care and custody of the other parent for a period of one year
24 without any provision for the child's support, or without
25 communication from the parent or parents, with the intent on the
26 part of the parent or parents to abandon the child.

27 (b) The failure to provide identification, failure to provide
28 support, or failure to communicate is presumptive evidence of
29 the intent to abandon. If the parent or parents have made only
30 token efforts to support or communicate with the child, the court
31 may declare the child abandoned by the parent or parents.

32 (c) If the child has been left without provision for the child's
33 identification and the whereabouts of the parents are unknown, a
34 petition may be filed after the 120th day following the discovery
35 of the child and citation by publication may be commenced. The
36 petition may not be heard until after the 180th day following the
37 discovery of the child.

38 (d) If the parent has placed the child for adoption and has not
39 refused to give the required consent to adoption, evidence of the
40 adoptive placement shall not in itself preclude the court from

1 finding an intent on the part of that parent to abandon the child. If
2 the parent has placed the child for adoption and has refused to
3 give the required consent to adoption but has not taken
4 reasonable action to obtain custody of the child, evidence of the
5 adoptive placement shall not in itself preclude the court from
6 finding an intent on the part of that parent to abandon the child.

7 *(e) Notwithstanding subdivisions (a), (b), (c), and (d), if the*
8 *parent of an Indian child has transferred physical care, custody*
9 *and control of the child to an Indian custodian, that action shall*
10 *not be deemed to constitute an abandonment of the child.*

11 SEC. 10. Section 7892.5 is added to the Family Code, to read:

12 7892.5. The court shall not declare an Indian child free from
13 the custody or control of both parents, or one parent if the other
14 no longer has custody and control, unless both of the following
15 apply:

16 (a) The court finds, supported by clear and convincing
17 evidence, that active efforts were made in accordance with
18 Section 361.7 of the Welfare and Institutions Code.

19 (b) The court finds, supported by evidence beyond a
20 reasonable doubt, including testimony of one or more “qualified
21 expert witnesses” as defined in Section 224.5 of the Welfare and
22 Institutions Code, that the continued custody of the child by the
23 parent is likely to result in serious emotional or physical damage
24 to the child.

25 SEC. 11. Section 7907.3 is added to the Family Code, to read:

26 7907.3. The Interstate Compact on the Placement of Children
27 shall not apply to any placement, sending, or bringing of an
28 Indian child into another state pursuant to a transfer of
29 jurisdiction to a tribal court under Section 1911 of the Indian
30 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

31 SEC. 12. Section 8616.5 of the Family Code is amended to
32 read:

33 8616.5. (a) The Legislature finds and declares that some
34 adoptive children may benefit from either direct or indirect
35 contact with birth relatives, including the birth parent or parents
36 *or an Indian tribe*, after being adopted. Postadoption contact
37 agreements are intended to ensure children of an achievable level
38 of continuing contact when contact is beneficial to the children
39 and the agreements are voluntarily entered into by birth relatives,

1 including the birth parent or parents, *an Indian tribe*, and
2 adoptive parents.

3 (b) (1) Nothing in the adoption laws of this state shall be
4 construed to prevent the adopting parent or parents, the birth
5 relatives, including the birth parent or parents, *an Indian tribe*,
6 and the child from voluntarily entering into a written agreement
7 to permit continuing contact between the birth relatives,
8 including the birth parent or parents, *the Indian tribe*, and the
9 child if the agreement is found by the court to have been entered
10 into voluntarily and to be in the best interests of the child at the
11 time the adoption petition is granted.

12 (2) Except as provided in paragraph (3), the terms of any
13 postadoption contact agreement executed under this section shall
14 be limited to, but need not include, all of the following:

15 (A) Provisions for visitation between the child and a birth
16 parent or parents and other birth relatives, including siblings, and
17 the child's Indian tribe if the case is governed by the Indian Child
18 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

19 (B) Provisions for future contact between a birth parent or
20 parents or other birth relatives, including siblings, or both, *or the*
21 *Indian tribe* and the child or an adoptive parent, or both, and in
22 cases governed by the Indian Child Welfare Act, the child's
23 Indian tribe.

24 (C) Provisions for the sharing of information about the child in
25 the future.

26 (3) The terms of any postadoption contact agreement shall be
27 limited to the sharing of information about the child, unless the
28 child has an existing relationship with the birth relative.

29 (c) At the time an adoption decree is entered pursuant to a
30 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
31 9000, the court entering the decree may grant postadoption
32 privileges if an agreement for those privileges has been entered
33 into, including agreements entered into pursuant to subdivision
34 (f) of Section 8620. *The hearing to grant the adoption petition*
35 *and issue an order of adoption may be continued as necessary to*
36 *permit parties who are in the process of negotiating a*
37 *postadoption agreement to reach a final agreement.*

38 (d) The child who is the subject of the adoption petition shall
39 be considered a party to the postadoption contact agreement. The
40 written consent to the terms and conditions of the postadoption

1 contact agreement and any subsequent modifications of the
2 agreement by a child who is 12 years of age or older is a
3 necessary condition to the granting of privileges regarding
4 visitation, contact, or sharing of information about the child,
5 unless the court finds by a preponderance of the evidence that the
6 agreement, as written, is in the best interests of the child. Any
7 child who has been found to come within Section 300 of the
8 Welfare and Institutions Code or who is the subject of a petition
9 for jurisdiction of the juvenile court under Section 300 of the
10 Welfare and Institutions Code shall be represented by an attorney
11 for purposes of consent to the postadoption contact agreement.

12 (e) A postadoption contact agreement shall contain the
13 following warnings in bold type:

14 (1) After the adoption petition has been granted by the court,
15 the adoption cannot be set aside due to the failure of an adopting
16 parent, a birth parent, a birth relative, *an Indian tribe*, or the child
17 to follow the terms of this agreement or a later change to this
18 agreement.

19 (2) A disagreement between the parties or litigation brought to
20 enforce or modify the agreement shall not affect the validity of
21 the adoption and shall not serve as a basis for orders affecting the
22 custody of the child.

23 (3) A court will not act on a petition to change or enforce this
24 agreement unless the petitioner has participated, or attempted to
25 participate, in good faith in mediation or other appropriate
26 dispute resolution proceedings to resolve the dispute.

27 (f) Upon the granting of the adoption petition and the issuing
28 of the order of adoption of a child who is a dependent of the
29 juvenile court, juvenile court dependency jurisdiction shall be
30 terminated. Enforcement of the postadoption contact agreement
31 shall be under the continuing jurisdiction of the court granting
32 the petition of adoption. The court may not order compliance
33 with the agreement absent a finding that the party seeking the
34 enforcement participated, or attempted to participate, in good
35 faith in mediation or other appropriate dispute resolution
36 proceedings regarding the conflict, prior to the filing of the
37 enforcement action, and that the enforcement is in the best
38 interests of the child. Documentary evidence or offers of proof
39 may serve as the basis for the court's decision regarding
40 enforcement. No testimony or evidentiary hearing shall be

1 required. The court shall not order further investigation or
2 evaluation by any public or private agency or individual absent a
3 finding by clear and convincing evidence that the best interests of
4 the child may be protected or advanced only by that inquiry and
5 that the inquiry will not disturb the stability of the child's home
6 to the detriment of the child.

7 (g) The court may not award monetary damages as a result of
8 the filing of the civil action pursuant to subdivision (e) of this
9 section.

10 (h) A postadoption contact agreement may be modified or
11 terminated only if either of the following occurs:

12 (1) All parties, including the child if the child is 12 years of
13 age or older at the time of the requested termination or
14 modification, have signed a modified postadoption contact
15 agreement and the agreement is filed with the court that granted
16 the petition of adoption.

17 (2) The court finds all of the following:

18 (A) The termination or modification is necessary to serve the
19 best interests of the child.

20 (B) There has been a substantial change of circumstances
21 since the original agreement was executed and approved by the
22 court.

23 (C) The party seeking the termination or modification has
24 participated, or attempted to participate, in good faith in
25 mediation or other appropriate dispute resolution proceedings
26 prior to seeking court approval of the proposed termination or
27 modification.

28 Documentary evidence or offers of proof may serve as the
29 basis for the court's decision. No testimony or evidentiary
30 hearing shall be required. The court shall not order further
31 investigation or evaluation by any public or private agency or
32 individual absent a finding by clear and convincing evidence that
33 the best interests of the child may be protected or advanced only
34 by that inquiry and that the inquiry will not disturb the stability
35 of the child's home to the detriment of the child.

36 (i) All costs and fees of mediation or other appropriate dispute
37 resolution proceedings shall be borne by each party, excluding
38 the child. All costs and fees of litigation shall be borne by the
39 party filing the action to modify or enforce the agreement when
40 no party has been found by the court as failing to comply with an

1 existing postadoption contact agreement. Otherwise, a party,
2 other than the child, found by the court as failing to comply
3 without good cause with an existing agreement shall bear all the
4 costs and fees of litigation.

5 (j) The Judicial Council shall adopt rules of court and forms
6 for motions to enforce, terminate, or modify postadoption contact
7 agreements.

8 (k) The court may not set aside a decree of adoption, rescind a
9 relinquishment, or modify an order to terminate parental rights or
10 any other prior court order because of the failure of a birth
11 parent, adoptive parent, birth relative, *an Indian tribe*, or the
12 child to comply with any or all of the original terms of, or
13 subsequent modifications to, the postadoption contact agreement,
14 *except as follows:*

15 (1) *The court may modify a prior court order upon petition of*
16 *the birth parent, birth relative, or Indian tribe prior to issuing the*
17 *order of adoption under the following circumstances:*

18 (A) *When the prospective adoptive parent expressed a*
19 *willingness to enter into a postadoption agreement prior to or*
20 *during the proceedings to terminate parental rights or free the*
21 *child from parental custody and control or prior to a birth parent*
22 *giving consent to the adoption.*

23 (B) *Parental rights are terminated or a petition for freedom*
24 *from parental custody and control is granted at least in part*
25 *because of said willingness.*

26 (C) *The prospective adoptive parent fails to negotiate a*
27 *postadoption agreement in good faith.*

28 (2) *In the circumstances set out in paragraph (1) the court*
29 *may modify prior orders or issue new orders as necessary to*
30 *ensure the best interest of the child are met, including, but not*
31 *limited to, requiring the parties to engage in family mediation*
32 *services for the purpose of reaching a postadoption agreement,*
33 *initiating guardianship proceedings in lieu of an adoption, or*
34 *authorizing a change of adoptive placement for the child.*

35 SEC. 13. Section 8619.5 is added to the Family Code, to read:

36 8619.5. Whenever a final decree of adoption of an Indian
37 child has been vacated or set aside or the adoptive parent
38 voluntarily consents to termination of his or her parental rights to
39 the child, a biological parent or prior Indian custodian may
40 petition for return of custody and the court shall grant that

1 petition unless there is a showing, in a proceeding subject to the
2 provisions of Section 1912 of the Indian Child Welfare Act (25
3 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the
4 best interest of the child.

5 SEC. 14. Section 8620 of the Family Code is amended to
6 read:

7 8620. (a) (1) If a parent is seeking to relinquish a child
8 pursuant to Section 8700 or execute an adoption placement
9 agreement pursuant to Section 8801.3, the department, licensed
10 adoption agency, or adoption service provider, as applicable,
11 shall ask the child and the child's parent or custodian whether the
12 child is, or may be, a member of, or eligible for membership in
13 an Indian tribe or whether the child has been identified as a
14 member of an Indian organization. The department, licensed
15 adoption agency, or adoption service provider, as applicable,
16 shall complete the forms provided for this purpose by the
17 department and shall make this completed form a part of the file.

18 (2) If there is any oral or written information that indicates that
19 the child is, or may be, an Indian child, the department, licensed
20 adoption agency, or adoption service provider, as applicable,
21 shall obtain the following information:

22 (A) The name of the child involved, and the actual date and
23 place of birth of the child.

24 (B) The name, address, date of birth, and tribal affiliation of
25 the birth parents, maternal and paternal grandparents, and
26 maternal and paternal great-grandparents of the child.

27 (C) The name and address of extended family members of the
28 child who have a tribal affiliation.

29 (D) The name and address of the Indian tribes or Indian
30 organizations of which the child is, or may be, a member.

31 (E) A statement of the reasons why the child is, or may be, an
32 Indian.

33 (3) (A) The department, licensed adoption agency, or
34 adoption service provider, as applicable, shall send a notice,
35 which shall include information obtained pursuant to paragraph
36 (2) and a request for confirmation of the child's Indian status, to
37 any parent and any custodian of the child, and to any Indian tribe
38 of which the child is, or may be, a member or eligible for
39 membership. If any of the information required under paragraph
40 (2) cannot be obtained, the notice shall indicate that fact.

1 (B) The notice sent pursuant to subparagraph (A) shall
2 describe the nature of the proceeding and advise the recipient of
3 the Indian tribe's right to intervene in the proceeding on its own
4 behalf or on behalf of a tribal member relative of the child.

5 (b) The department shall adopt regulations to ensure that if a
6 child who is being voluntarily relinquished for adoption, pursuant
7 to Section 8700, is an Indian child, the parent of the child shall be
8 advised of his or her right to withdraw his or her consent and
9 thereby rescind the relinquishment of an Indian child for any
10 reason at any time prior to entry of a final decree of termination
11 of parental rights or adoption, pursuant to Section 1913 of Title
12 25 of the United States Code.

13 (c) If a child who is the subject of an adoption proceeding after
14 being relinquished for adoption pursuant to Section 8700, is an
15 Indian child, the child's Indian tribe may intervene in that
16 proceeding on behalf of a tribal member relative of the child.

17 (d) Any notice sent under this section shall, ~~consistent with~~
18 ~~subdivision (f) of Rule 1439 of the California Rules of Court, as~~
19 ~~it read on January 1, 2003, comply with all of the following:~~

20 ~~(1) Notice shall be sent by registered or certified mail with~~
21 ~~return receipt requested, and additional notice by first-class mail~~
22 ~~is recommended.~~

23 ~~(2) Notice to the tribe shall be to the tribal chairman, unless~~
24 ~~the tribe has designated another agent for service.~~

25 ~~(3) Notice shall be sent to all tribes of which the child may be~~
26 ~~a member or eligible for membership.~~

27 ~~(4) If the identity or location of an Indian relative or Indian~~
28 ~~eustodian or the tribe cannot be determined, notice shall be sent~~
29 ~~to the office of the Secretary of the Interior, which has 15 days to~~
30 ~~provide notice as required.~~

31 ~~(5) Notice shall be sent whenever there is reason to believe the~~
32 ~~child may be an Indian child, and for every hearing thereafter,~~
33 ~~including, but not limited to, the hearing at which the final~~
34 ~~adoption order is to be granted. Section 180.~~

35 (e) If all prior notices required by this section have been
36 provided to an Indian tribe, the Indian tribe receiving those prior
37 notices is encouraged to provide notice to the department and to
38 the licensed adoption agency or adoption service provider, not
39 later than five calendar days prior to the date of the hearing to
40 determine whether or not the final adoption order is to be

1 granted, indicating whether or not it intends to intervene in the
2 proceeding required by this section, either on its own behalf or
3 on behalf of a tribal member who is a relative of the child.

4 (f) The Legislature finds and declares that some adoptive
5 children may benefit from either direct or indirect contact with an
6 Indian tribe. Nothing in the adoption laws of this state shall be
7 construed to prevent the adopting parent or parents, the birth
8 relatives, including the birth parent or parents, an Indian tribe,
9 and the child, from voluntarily entering into a written agreement
10 to permit continuing contact between the Indian tribe and the
11 child, if the agreement is found by the court to have been entered
12 into voluntarily and to be in the best interest of the child at the
13 time the adoption petition is granted.

14 (g) With respect to giving notice to Indian tribes in the case of
15 voluntary placements of Indian children pursuant to this section,
16 a person, other than a birth parent of the child, shall be subject to
17 a civil penalty if that person knowingly and willfully:

18 (1) Falsifies, conceals, or covers up by any trick, scheme, or
19 device, a material fact concerning whether the child is an Indian
20 child or the parent is an Indian.

21 (2) Makes any false, fictitious, or fraudulent statement,
22 omission, or representation.

23 (3) Falsifies a written document knowing that the document
24 contains a false, fictitious, or fraudulent statement or entry
25 relating to a material fact.

26 (4) Assists any person in physically removing a child from the
27 State of California in order to obstruct the application of
28 notification.

29 (h) Civil penalties for a violation of subdivision (g) by a
30 person other than a birth parent of the child are as follows:

31 (1) For the initial violation, a person shall be fined not more
32 than ten thousand dollars (\$10,000).

33 (2) For any subsequent violation, a person shall be fined not
34 more than twenty thousand dollars (\$20,000).

35 (i) For purposes of this section, the terms "Indian tribe,"
36 "Indian organization," and "Indian child" are defined in Section
37 1903 of Title 25 of the United States Code.

38 SEC. 15. Section 8710 of the Family Code is amended to
39 read:

1 8710. ~~Where~~ (a) If a child is being considered for adoption,
2 the department or licensed adoption agency shall first consider
3 adoptive placement in the home of a relative *or, in the case of an*
4 *Indian child, according to the placement preferences and*
5 *standards set out in subdivisions (c), (d), (e), (f), (g), (h), and (i)*
6 *of Section 361.31 of the Welfare and Institutions Code.* However,
7 if a relative is not available, if placement with an available
8 relative is not in the child's best interest, or if placement would
9 permanently separate the child from other siblings who are being
10 considered for adoption or who are in foster care and an
11 alternative placement would not require the permanent
12 separation, the foster parent or parents of the child shall be
13 considered with respect to the child along with all other
14 prospective adoptive parents where all of the following
15 conditions are present:

16 ~~(a)~~
17 (1) The child has been in foster care with the foster parent or
18 parents for a period of more than four months.

19 ~~(b)~~
20 (2) The child has substantial emotional ties to the foster parent
21 or parents.

22 ~~(c)~~
23 (3) The child's removal from the foster home would be
24 seriously detrimental to the child's well-being.

25 ~~(d)~~
26 (4) The foster parent or parents have made a written request to
27 be considered to adopt the child.

28 (b) *In the case of an Indian child, whose foster parent or*
29 *parents or other prospective adoptive parents do not fall within*
30 *the placement preferences established in subdivision (c) or (d) of*
31 *Section 361.31 of the Welfare and Institutions Code, the foster*
32 *parent or parents or other prospective adoptive parents shall*
33 *only be considered if the court finds, supported by clear and*
34 *convincing evidence, that good cause exists to deviate from these*
35 *placement preferences.*

36 (c) This section does not apply to a child who has been
37 adjudged a dependent of the juvenile court pursuant to Section
38 300 of the Welfare and Institutions Code.

39 SEC. 16. Section 9208 is added to the Family Code, to read:

1 9208. (a) The clerk of the superior court entering a final order
2 of adoption concerning an Indian child shall provide the
3 Secretary of the Interior or his or her designee with a copy of the
4 order within 30 days of the date of the order, together with any
5 information necessary to show the following:

- 6 (1) The name and tribal affiliation of the child.
- 7 (2) The names and addresses of the biological parents.
- 8 (3) The names and addresses of the adoptive parents.
- 9 (4) The identity of any agency having files or information
10 relating to that adoptive placement.

11 (b) If the court records contain an affidavit of the biological
12 parent or parents that their identity remain confidential, the court
13 shall include that affidavit with the other information.

14 SEC. 17. Section 9209 is added to the Family Code, to read:

15 9209. (a) Upon application by an Indian individual who has
16 reached the age of 18 years and who was the subject of an
17 adoptive placement, the court which entered the final decree of
18 adoption shall inform that individual of the tribal affiliation, if
19 any, of the individual's biological parents and provide any other
20 information as may be necessary to protect any rights flowing
21 from the individual's tribal relationship, including, but not
22 limited to, tribal membership rights or eligibility for federal or
23 tribal programs or services available to Indians.

24 (b) If the court records contain an affidavit of the biological
25 parent or parents that their identity remain confidential, the court
26 shall include that affidavit with the other information.

27 SEC. 18. Section 9210 of the Family Code is amended to
28 read:

29 9210. (a) Except as otherwise provided in subdivisions (b)
30 and (c), a court of this state has jurisdiction over a proceeding for
31 the adoption of a minor commenced under this part if any of the
32 following applies:

- 33 (1) Immediately before commencement of the proceeding, the
34 minor lived in this state with a parent, a guardian, a prospective
35 adoptive parent, or another person acting as parent, for at least
36 six consecutive months, excluding periods of temporary absence,
37 or, in the case of a minor under six months of age, lived in this
38 state with any of those individuals from soon after birth and there
39 is available in this state substantial evidence concerning the
40 minor's present or future care.

1 (2) Immediately before commencement of the proceeding, the
2 prospective adoptive parent lived in this state for at least six
3 consecutive months, excluding periods of temporary absence,
4 and there is available in this state substantial evidence concerning
5 the minor's present or future care.

6 (3) The agency that placed the minor for adoption is located in
7 this state and both of the following apply:

8 (A) The minor and the minor's parents, or the minor and the
9 prospective adoptive parent, have a significant connection with
10 this state.

11 (B) There is available in this state substantial evidence
12 concerning the minor's present or future care.

13 (4) The minor and the prospective adoptive parent are
14 physically present in this state and the minor has been abandoned
15 or it is necessary in an emergency to protect the minor because
16 the minor has been subjected to or threatened with mistreatment
17 or abuse or is otherwise neglected.

18 (5) It appears that no other state would have jurisdiction under
19 requirements substantially in accordance with paragraphs (1) to
20 (4), inclusive, or another state has declined to exercise
21 jurisdiction on the ground that this state is the more appropriate
22 forum to hear a petition for adoption of the minor, and there is
23 available in this state substantial evidence concerning the minor's
24 present or future care.

25 (b) A court of this state may not exercise jurisdiction over a
26 proceeding for adoption of a minor if at the time the petition for
27 adoption is filed a proceeding concerning the custody or adoption
28 of the minor is pending in a court of another state exercising
29 jurisdiction substantially in conformity with this part, unless the
30 proceeding is stayed by the court of the other state because this
31 state is a more appropriate forum or for another reason. *For*
32 *purposes of this subdivision, "a court of another state" includes,*
33 *in the case of an Indian child, a "tribal court" as defined in*
34 *Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.*
35 *1901 et seq.).*

36 (c) If a court of another state has issued a decree or order
37 concerning the custody of a minor who may be the subject of a
38 proceeding for adoption in this state, a court of this state may not
39 exercise jurisdiction over a proceeding for adoption of the minor,
40 unless both of the following apply:

1 (1) The requirements for modifying an order of a court of
2 another state under this part are met, the court of another state
3 does not have jurisdiction over a proceeding for adoption
4 substantially in conformity with paragraphs (1) to (4), inclusive,
5 of subdivision (a), or the court of another state has declined to
6 assume jurisdiction over a proceeding for adoption.

7 (2) The court of this state has jurisdiction under this section
8 over the proceeding for adoption.

9 SEC. 19. Section 1449 is added to the Probate Code, to read:

10 1449. (a) As used in this division, unless the context
11 otherwise requires, the terms “Indian,” “Indian child,” “Indian
12 child’s tribe,” “Indian custodian,” “Indian tribe,” “reservation,”
13 and “tribal court” shall be defined as provided in Section 1903 of
14 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

15 (b) When used in connection with an Indian child, the terms
16 “extended family member” and “parent” shall be defined as
17 provided in Section 1903 of the Indian Child Welfare Act.

18 (c) “Indian child custody proceeding” means a “child custody
19 proceeding” within the meaning of Section 1903 of the Indian
20 Child Welfare Act, including a voluntary or involuntary
21 proceeding that may result in an Indian child’s temporary or
22 long-term foster care or guardianship placement if the parent or
23 Indian custodian cannot have the child returned upon demand,
24 termination of parental rights or adoptive placement.

25 (d) When an Indian child is a member of more than one tribe
26 or is eligible for membership in more than one tribe, the court
27 shall make a determination, in writing together with the reasons
28 for it, as to which tribe is the Indian child’s tribe as follows:

29 (1) If the Indian child is or becomes a member of only one
30 tribe, that tribe shall be designated as the Indian child’s tribe,
31 even though the child is eligible for membership in another tribe.

32 (2) If an Indian child is or becomes a member of more than
33 one tribe, or is not a member of any tribe but is eligible for
34 membership more than one tribe, the tribe with which the child
35 has the more significant contacts shall be designated as the
36 Indian child’s tribe. In determining which tribe the child has the
37 more significant contacts with, the court shall consider, among
38 other things, the following factors:

39 (A) The length of residence on or near the reservation of each
40 tribe and frequency of contact with each tribe.

1 (B) The child's participation in activities of each tribe.

2 (C) The child's fluency in the language of each tribe.

3 (D) Whether there has been a previous adjudication with
4 respect to the child by a court of one of the tribes.

5 (E) The residence on or near one of the tribes' reservations by
6 the child parents, Indian custodian, or extended family members.

7 (f) Tribal membership of custodial parent or Indian custodian.

8 (g) Interest asserted by each tribe in response to the notice
9 specified in Section 224.11.

10 (h) The child's self-identification.

11 SEC. 20. Section 1456 is added to the Probate Code, to read:

12 1456. (a) The Legislature finds and declares the following:

13 (1) There is no resource that is more vital to the continued
14 existence and integrity of recognized Indian tribes than their
15 children, and the State of California has an interest in protecting
16 Indian children who are members of, or are eligible for
17 membership in, an Indian tribe. The state is committed to
18 protecting the essential tribal relations and best interest of an
19 Indian child by promoting practices, in accordance with the
20 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other
21 applicable law, designed to prevent the child's involuntary
22 out-of-home placement and, whenever such placement is
23 necessary or ordered, by placing the child, whenever possible, in
24 a placement that reflects the unique values of the child's tribal
25 culture and is best able to assist the child in establishing,
26 developing, and maintaining a political, cultural, and social
27 relationship with the child's tribe and tribal community.

28 (2) It is in the interest of an Indian child that the child's
29 membership in the child's Indian tribe and connection to the
30 tribal community be encouraged and protected, regardless of
31 whether or not the child is in the physical custody of an Indian
32 parent or Indian custodian at the commencement of a child
33 custody proceeding, the parental rights of the child's parents
34 have been terminated, or the child has resided or been domiciled
35 on an Indian reservation.

36 (b) In all Indian child custody proceedings, as defined in the
37 federal Indian Child Welfare Act, the court shall consider all of
38 the findings contained in subdivision (a), strive to promote the
39 stability and security of Indian tribes and families, comply with
40 the federal Indian Child Welfare Act, and seek to protect the best

1 interest of the child. Whenever an Indian child is removed from a
2 foster care home or institution, guardianship, or adoptive
3 placement for the purpose of further foster care, guardianship, or
4 adoptive placement, placement of the child shall be in
5 accordance with the Indian Child Welfare Act.

6 (c) A determination by an Indian tribe that an unmarried
7 person, who is under the age of 18 years, is either (1) a member
8 of an Indian tribe or (2) eligible for membership in an Indian
9 tribe and a biological child of a member of an Indian tribe shall
10 constitute a significant political affiliation with the tribe and shall
11 require the application of the federal Indian Child Welfare Act to
12 the proceedings.

13 (d) (1) If the Indian Child Welfare Act applies to a proceeding
14 under this code, to the extent that this code or the Adoption and
15 Safe Families Act of 1999 (P.L. No. 105-89) are inconsistent or
16 in conflict with the Indian Child Welfare Act, the provisions of
17 the Indian Child Welfare Act shall prevail.

18 (2) In any case in which this code or other applicable state or
19 federal law provides a higher standard of protection to the rights
20 of the parent or Indian custodian of an Indian child, or the Indian
21 child's tribe, than the rights provided under the Indian Child
22 Welfare Act, the court shall apply the higher state or federal
23 standard.

24 (e) Any Indian child, the Indian child's tribe, or the parent or
25 Indian custodian from whose custody the child has been
26 removed, may petition any court of competent jurisdiction to
27 invalidate an action in an Indian child custody proceeding
28 involving the child if the action violated Sections 1911, 1912,
29 and 1913 of the Indian Child Welfare Act.

30 SEC. 21. Section 1457 is added to the Probate Code, to read:

31 1457. (a) If the court or petitioner knows or has reason to
32 know that the proposed ward may be an Indian child, the Indian
33 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) shall apply to
34 the following guardianship or conservatorship proceedings under
35 this division:

36 (1) In any case in which the petition is a petition for
37 guardianship of the person and the proposed guardian is not the
38 natural parent or Indian custodian of the proposed ward, unless
39 the proposed guardian has been nominated by the natural parents

1 pursuant to Section 1500 and the parents retain the right to have
2 custody of the child returned to them upon demand.

3 (2) To a proceeding to have an Indian child declared free from
4 the custody and control of one or both parents brought in a
5 guardianship proceeding.

6 (3) In any case in which the petition is a petition for
7 conservatorship of the person of a minor whose marriage has
8 been dissolved, the proposed conservator is seeking physical
9 custody of the minor, the proposed conservator is not the natural
10 parent or Indian custodian of the proposed conservatee and the
11 natural parent or Indian custodian does not retain the right to
12 have custody of the child returned to them upon demand.

13 (b) When the Indian Child Welfare Act applies to a proceeding
14 under this division, the court shall apply Sections 224.2 to 224.6,
15 inclusive, and Sections 305.5, 361.31, and 361.7 of the Welfare
16 and Institutions Code, and the following rules from the California
17 Rules of Court, as they read on January 1, 2005:

18 (1) Rule 1410, subdivision (b)(7).

19 (2) Rule 1412, subdivision (i).

20 (3) Rule 1439.

21 SEC. 22. Section 1458 is added to the Probate Code, to read:

22 1458. (a) If a proceeding under this division involves a child
23 who is not an Indian child, the court may recognize the child's
24 tribe and grant standing to participate as a party to the proceeding
25 if either of the following applies:

26 (1) The child is not eligible for membership in his or her tribe
27 but is the biological grandchild of a member of the tribe or
28 resides or is domiciled within the boundaries of an Indian
29 reservation.

30 (2) The child or his or her biological parent or grandparent is a
31 member of a tribe that is not recognized as eligible for the
32 services provided to Indians by the Secretary of the Interior but
33 the tribe, band, or nation is recognized as an Indian tribe by any
34 state or local governmental entity or by Canada or any of its
35 provinces.

36 (b) If the court recognizes the child's tribe and grants standing
37 to the tribe to participate as a party to the proceeding, the tribe
38 may do all of the following:

39 (1) Be present at the hearing.

(2) Be represented by retained counsel or a representative of the tribe designated by the tribe to intervene on behalf of the tribe, provided that when the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual to appear on behalf of the tribe shall be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe.

(3) Address the court.

(4) Receive notice of hearings.

(5) Examine all court documents relating to the proceeding.

(6) Present evidence.

(7) Submit written reports and recommendations to the court.

(8) Perform other duties and responsibilities as requested or approved by the court.

SEC. 23. Section 1460.2 is added to the Probate Code, to read:

1460.2. (a) If the court or petitioner knows or has reason to know that the proposed ward may be an Indian child, notice shall comply with subdivision (b) in any case in which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies, as specified in Section 1457.

(b) Any notice sent under this section shall be sent to the minor's parent or legal guardian, Indian custodian, if any, and the Indian child's tribe, and shall comply with all of the following requirements:

(1) Notice shall be sent by registered or certified mail with return receipt requested, and additional notice by first-class mail is recommended.

(2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.

(3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the Indian child's tribe in accordance with subdivision (d) of Section 1448, after which notice need only be sent to the tribe determined to be the Indian child's tribe.

(4) Notice shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. When the identity of the tribe of which the child

1 may be a member or eligible for membership is unknown, the
2 notice provided to the Bureau of Indian Affairs shall serve as
3 substitute notice to the child's tribe. If the identity or location of
4 the Indian child's tribe is known, a copy of the notice shall also
5 be sent directly to the Secretary of the Interior if that notice is
6 required under federal law.

7 (5) The notice shall include all of the following information:

8 (A) The name, birthdate, and birthplace of the Indian child.

9 (B) The name of any Indian tribe in which the child is a
10 member or may be eligible for membership.

11 (C) All names known of the Indian child's biological parents,
12 grandparents and great-grandparents or Indian custodians,
13 including maiden, married and former names or aliases, as well
14 as their current and former addresses, birthdates, places of birth
15 and death, tribal enrollment numbers, any other identifying
16 information.

17 (D) A copy of the petition.

18 (E) A copy of the child's birth certificate, if available.

19 (F) The location, mailing address, and telephone number of
20 the court and all parties notified pursuant to this section.

21 (G) A statement listing the rights of the child's parents, Indian
22 custodians, and tribes, including all of the following:

23 (i) The right to intervene in the proceeding.

24 (ii) The right to petition the court to transfer the proceeding to
25 the tribal court of the Indian child's tribe, absent objection by
26 either parent and subject to declination by the tribal court.

27 (iii) The right to, upon request, be granted up to an additional
28 20 days from the receipt of the notice to prepare for the
29 proceeding.

30 (iv) A statement of the potential legal consequences of an
31 adjudication on the future custodial rights of the child's parents
32 or Indian custodians.

33 (v) A statement that if the parents or Indian custodians are
34 unable to afford counsel in an involuntary proceeding, counsel
35 shall be appointed to represent the parents or custodians.

36 (vi) A statement that the information contained in the notice,
37 petition, pleading, and other court documents is confidential.

38 (6) Notice shall be sent whenever there is reason to believe the
39 child may be an Indian child, and for every hearing thereafter,
40 including, but not limited to, the hearing at which a final

1 adoption order is to be granted. After a tribe intervenes in a
2 proceeding, the information required pursuant to paragraphs (3),
3 (4), (5), and (7) need not be included with notice.

4 (7) Proof of the notice, including copies of notices sent and all
5 return receipts and responses received, shall be filed with the
6 court in advance of the hearing except as permitted under
7 subdivision (h).

8 (8) No proceeding shall be held until at least 10 days after
9 receipt of notice by the parent, Indian custodian, the tribe or the
10 Bureau of Indian Affairs, except for the detention hearing,
11 provided that notice of the detention hearing shall be given as
12 soon as possible after the filing of the petition initiating the
13 proceeding and proof of the notice is filed with the court within
14 10 days after the filing of the petition. With the exception of the
15 detention hearing, the parent, Indian custodian or the tribe shall,
16 upon request, be granted up to 20 additional days to prepare for
17 the proceeding. Nothing herein shall be construed as limiting the
18 rights of the parent, Indian custodian, or tribe to more than
19 10-days' notice when the lengthier notice period is required.

20 (9) With respect to giving notice to Indian tribes, a party shall
21 be subject to court sanctions if that person knowingly and
22 willfully falsifies or conceals a material fact concerning whether
23 the child is an Indian child, or counsels a party to do so.

24 SEC. 24. Section 1474 is added to the Probate Code, to read:

25 1474. (a) If an Indian custodian or biological parent of an
26 Indian child lacks the financial ability to retain counsel and
27 requests the appointment of counsel, the court shall, at or before
28 the time of the hearing, appoint the public defender or private
29 counsel to represent the interest of the person in proceedings
30 described in Part 2 (commencing with Section 1500).

31 (b) If the court appoints counsel under subdivision (a), the
32 county shall pay the sum to that counsel.

33 SEC. 25. Section 1510 of the Probate Code is amended to
34 read:

35 1510. (a) A relative or other person on behalf of the minor, or
36 the minor if 12 years of age or older, may file a petition for the
37 appointment of a guardian of the minor.

38 (b) The petition shall request that a guardian of the person or
39 estate of the minor, or both, be appointed, shall specify the name
40 and address of the proposed guardian and the name and date of

1 birth of the proposed ward, and shall state that the appointment is
2 necessary or convenient.

3 (c) The petition shall set forth, so far as is known to the
4 petitioner, the names and addresses of all of the following:

5 (1) The parents of the proposed ward.

6 (2) The person having legal custody of the proposed ward and,
7 if that person does not have the care of the proposed ward, the
8 person having the care of the proposed ward.

9 (3) The relatives of the proposed ward within the second
10 degree.

11 (4) In the case of a guardianship of the estate, the spouse of the
12 proposed ward.

13 (5) Any person nominated as guardian for the proposed ward
14 under Section 1500 or 1501.

15 (6) *In the case of a guardianship of the person involving an*
16 *Indian child, any Indian custodian and the proposed ward's*
17 *tribe.*

18 (d) If the proposed ward is a patient in or on leave of absence
19 from a state institution under the jurisdiction of the State
20 Department of Mental Health or the State Department of
21 Developmental Services and that fact is known to the petitioner,
22 the petition shall state that fact and name the institution.

23 (e) The petition shall state, so far as is known to the petitioner,
24 whether or not the proposed ward is receiving or is entitled to
25 receive benefits from the Veterans Administration and the
26 estimated amount of the monthly benefit payable by the Veterans
27 Administration for the proposed ward.

28 (f) If the petitioner has knowledge of any pending adoption,
29 juvenile court, marriage dissolution, domestic relations, custody,
30 or other similar proceeding affecting the proposed ward, the
31 petition shall disclose the pending proceeding.

32 (g) If the petitioners have accepted or intend to accept physical
33 care or custody of the child with intent to adopt, whether formed
34 at the time of placement or formed subsequent to placement, the
35 petitioners shall so state in the guardianship petition, whether or
36 not an adoption petition has been filed.

37 (h) If the proposed ward is or becomes the subject of an
38 adoption petition, the court shall order the guardianship petition
39 consolidated with the adoption petition.

1 *(i) If the proposed ward is or may be an Indian child, the*
2 *petition shall state that fact.*

3 SEC. 26. Section 1511 of the Probate Code is amended to
4 read:

5 1511. (a) Except as provided in subdivisions (f) and (g), at
6 least 15 days before the hearing on the petition for the
7 appointment of a guardian, notice of the time and place of the
8 hearing shall be given as provided in subdivisions (b), (c), (d),
9 and (e) of this section. The notice shall be accompanied by a
10 copy of the petition. The court may not shorten the time for
11 giving the notice of hearing under this section.

12 (b) Notice shall be served in the manner provided in Section
13 415.10 or 415.30 of the Code of Civil Procedure, or in any
14 manner authorized by the court, on all of the following persons:

- 15 (1) The proposed ward if 12 years of age or older.
16 (2) Any person having legal custody of the proposed ward, or
17 serving as guardian of the estate of the proposed ward.
18 (3) The parents of the proposed ward.
19 (4) Any person nominated as a guardian for the proposed ward
20 under Section 1500 or 1501.

21 (c) Notice shall be given by mail sent to their addresses stated
22 in the petition, or in any manner authorized by the court, to all of
23 the following:

- 24 (1) The spouse named in the petition.
25 (2) The relatives named in the petition, except that if the
26 petition is for the appointment of a guardian of the estate only the
27 court may dispense with the giving of notice to any one or more
28 or all of the relatives.
29 (3) The person having the care of the proposed ward if other
30 than the person having legal custody of the proposed ward.

31 (d) If notice is required by Section 1461 or Section 1542 to be
32 given to the Director of Mental Health or the Director of
33 Developmental Services or the Director of Social Services, notice
34 shall be mailed as so required.

35 (e) If the petition states that the proposed ward is receiving or
36 is entitled to receive benefits from the Veterans Administration,
37 notice shall be mailed to the office of the Veterans
38 Administration referred to in Section 1461.5.

39 (f) Unless the court orders otherwise, notice shall not be given
40 to any of the following:

1 (1) The parents or other relatives of a proposed ward who has
2 been relinquished to a licensed adoption agency.

3 (2) The parents of a proposed ward who has been judicially
4 declared free from their custody and control.

5 (g) Notice need not be given to any person if the court so
6 orders upon a determination of either of the following:

7 (1) The person cannot with reasonable diligence be given the
8 notice.

9 (2) The giving of the notice would be contrary to the interest
10 of justice.

11 (h) Before the appointment of a guardian is made, proof shall
12 be made to the court that each person entitled to notice under this
13 section either:

14 (1) Has been given notice as required by this section.

15 (2) Has not been given notice as required by this section
16 because the person cannot with reasonable diligence be given the
17 notice or because the giving of notice to that person would be
18 contrary to the interest of justice.

19 (i) *If notice is required by Section 1460.2 to be given to an*
20 *Indian custodian or tribe, notice shall be mailed as so required.*

21 SEC. 27. Section 1601 of the Probate Code is amended to
22 read:

23 1601. Upon petition of the guardian, a parent, ~~or~~ the ward, *or,*
24 *in the case of an Indian child, an Indian custodian or the ward's*
25 *tribe*, the court may make an order terminating the guardianship
26 if the court determines that it is in the ward's best interest to
27 terminate the guardianship. Notice of the hearing on the petition
28 shall be given for the period and in the manner provided in
29 Chapter 3 (commencing with Section 1460) of Part 1.

30 SEC. 28. Section 2112 of the Probate Code is repealed.

31 ~~2112. With respect to a guardianship or conservatorship~~
32 ~~proceedings to which Title 25 of the United States Code~~
33 ~~(Indians) applies, the provisions of this division are subject to the~~
34 ~~provisions of Title 25 and, to the extent inconsistent with Title~~
35 ~~25, are superseded by that title.~~

36 SEC. 29. Section 224 is added to the Welfare and Institutions
37 Code, to read:

38 224. (a) The Legislature finds and declares the following:

39 (1) There is no resource that is more vital to the continued
40 existence and integrity of Indian tribes than their children, and

1 the State of California has an interest in protecting Indian
2 children who are members of, or are eligible for membership in,
3 an Indian tribe. The state is committed to protecting the essential
4 tribal relations and best interest of an Indian child by promoting
5 practices, in accordance with the Indian Child Welfare Act (25
6 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to
7 prevent the child's involuntary out-of-home placement and,
8 whenever that placement is necessary or ordered, by placing the
9 child, whenever possible, in a placement that reflects the unique
10 values of the child's tribal culture and is best able to assist the
11 child in establishing, developing, and maintaining a political,
12 cultural, and social relationship with the child's tribe and tribal
13 community.

14 (2) It is in the interest of an Indian child that the child's
15 membership in the child's Indian tribe and connection to the
16 tribal community be encouraged and protected, regardless of
17 whether or not the child is in the physical custody of an Indian
18 parent or Indian custodian at the commencement of a child
19 custody proceeding, the parental rights of the child's parents
20 have been terminated, or the child has resided or been domiciled
21 on an Indian reservation.

22 (b) In all Indian child custody proceedings, as defined in the
23 federal Indian Child Welfare Act the court shall consider all of
24 the findings contained in subdivision (a), strive to promote the
25 stability and security of Indian tribes and families, comply with
26 the federal Indian Child Welfare Act, and seek to protect the best
27 interest of the child. Whenever an Indian child is removed from a
28 foster care home or institution, guardianship, or adoptive
29 placement for the purpose of further foster care, guardianship, or
30 adoptive placement, placement of the child shall be in
31 accordance with the Indian Child Welfare Act.

32 (c) A determination by an Indian tribe that an unmarried
33 person, who is under the age of 18 years, is either (1) a member
34 of an Indian tribe or (2) eligible for membership in an Indian
35 tribe and a biological child of a member of an Indian tribe shall
36 constitute a significant political affiliation with the tribe and shall
37 require the application of the federal Indian Child Welfare Act to
38 the proceedings.

39 (d) (1) If the Indian Child Welfare Act applies to a child
40 custody proceeding under this code, to the extent that this code or

1 the Adoption and Safe Families Act of 1999 (P.L. 105-89) are
2 inconsistent or in conflict with the Indian Child Welfare Act, the
3 provisions of the Indian Child Welfare Act shall prevail.

4 (2) In any case in which this code or other applicable state or
5 federal law provides a higher standard of protection to the rights
6 of the parent or Indian custodian of an Indian child, or the Indian
7 child's tribe, than the rights provided under the Indian Child
8 Welfare Act, the court shall apply the higher standard.

9 (e) Any Indian child, the Indian child's tribe, or the parent or
10 Indian custodian from whose custody the child has been
11 removed, may petition any court of competent jurisdiction to
12 invalidate an action in an Indian child custody proceeding
13 involving the child if the action violated Sections 1911, 1912,
14 and 1913 of the Indian Child Welfare Act.

15 SEC. 30. Section 224.1 is added to the Welfare and
16 Institutions Code, to read:

17 224.1. (a) As used in this division, unless the context
18 otherwise requires, the terms "Indian," "Indian child," "Indian
19 child's tribe," "Indian custodian," "Indian tribe," "reservation,"
20 and "tribal court" shall be defined as provided in Section 1903 of
21 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

22 (b) As used in connection with an Indian child custody
23 proceeding, the terms "extended family member" and "parent"
24 shall be defined as provided in Section 1903 of the Indian Child
25 Welfare Act.

26 (c) "Indian child custody proceeding" means a "child custody
27 proceeding" within the meaning of Section 1903 of the Indian
28 Child Welfare Act, including a voluntary or involuntary
29 proceeding that may result in an Indian child's temporary or
30 long-term foster care or guardianship placement if the parent or
31 Indian custodian cannot have the child returned upon demand,
32 termination of parental rights or adoptive placement.

33 (d) If an Indian child is a member of more than one tribe or is
34 eligible for membership in more than one tribe, the court shall
35 make a determination, in writing together with the reasons for it,
36 as to which tribe is the Indian child's tribe as follows:

37 (1) If the Indian child is or becomes a member of only one
38 tribe, that tribe shall be designated as the Indian child's tribe,
39 even though the child is eligible for membership in another tribe.

1 (2) If an Indian child is or becomes a member of more than
2 one tribe, or is not a member of any tribe but is eligible for
3 membership in more than one tribe, the tribe with which the child
4 has the more significant contacts shall be designated as the
5 Indian child's tribe. In determining which tribe the child has the
6 more significant contacts with, the court shall consider, among
7 other things, the following factors:

8 (A) The length of residence on or near the reservation of each
9 tribe and frequency of contact with each tribe.

10 (B) The child's participation in activities of each tribe.

11 (C) The child's fluency in the language of each tribe.

12 (D) Whether there has been a previous adjudication with
13 respect to the child by a court of one of the tribes.

14 (E) Residence on or near one of the tribes' reservations by the
15 child parents, Indian custodian or extended family members.

16 (F) Tribal membership of custodial parent or Indian custodian.

17 (G) Interest asserted by each tribe in response to the notice
18 specified in Section 224.11.

19 (H) The child's self identification.

20 SEC. 31. Section 224.2 is added to the Welfare and
21 Institutions Code, to read:

22 224.2. If the court, a social worker, or probation officer knows
23 or has reason to know that an Indian child is involved, any notice
24 sent in an Indian child custody proceeding under this code shall
25 be sent to the minor's parents or legal guardian, Indian custodian,
26 if any, and the minor's tribe and comply with all of the following
27 requirements:

28 (a) Notice shall be sent by registered or certified mail with
29 return receipt requested, and additional notice by first-class mail
30 is recommended.

31 (b) Notice to the tribe shall be to the tribal chairperson, unless
32 the tribe has designated another agent for service.

33 (c) Notice shall be sent to all tribes of which the child may be
34 a member or eligible for membership.

35 (d) Notice shall be sent to the Secretary of the Interior's
36 designated agent, the Sacramento Area Director, Bureau of
37 Indian Affairs. When the identity of the tribe of which the child
38 may be a member or eligible for membership in is unknown, the
39 notice provided to the Bureau of Indian Affairs will serve as
40 substitute notice to the child's tribe. If the identity or location of

1 the parents, Indian custodians, or the minor's tribe is known, a
2 copy of the notice shall also be sent directly to the Secretary of
3 the Interior if the notice is required under federal law.

4 (e) In addition to the information specified in other sections of
5 this article, notice shall include all of the following information:

6 (1) The name, birthdate, and birthplace of the Indian child.

7 (2) The name of the Indian tribe in which the child is a
8 member or may be eligible for membership.

9 (3) All names known of the Indian child's biological parents,
10 grandparents, and great-grandparents, or Indian custodians,
11 including maiden, married and former names or aliases, as well
12 as their current and former addresses, birthdates, places of birth
13 and death, tribal enrollment numbers, and any other identifying
14 information.

15 (4) A copy of the petition by which the proceeding was
16 initiated.

17 (5) A copy of the child's birth certificate, if available.

18 (6) The location, mailing address, and telephone number of the
19 court and all parties notified pursuant to this section.

20 (7) A statement listing the rights of the child's parents or legal
21 guardians, Indian custodians, and tribes. The rights shall include
22 all of the following:

23 (A) The right to intervene in the proceeding.

24 (B) The right to petition the court to transfer the proceeding to
25 the tribal court of the Indian child's tribe, absent objection by
26 either parent and subject to declination by the tribal court.

27 (C) The right to, upon request, be granted up to an additional
28 20 days from the receipt of the notice to prepare for the
29 proceeding.

30 (D) A statement of the potential legal consequences of an
31 adjudication on the future custodial rights of the child's parents,
32 legal guardians, or Indian custodians.

33 (E) A statement that if the parents or Indian custodians are
34 unable to afford counsel in an involuntary proceeding, counsel
35 will be appointed to represent the parents or custodians.

36 (F) A statement that the information contained in the notice,
37 petition, pleading, and other court documents is confidential.

38 (f) Notice shall be sent whenever there is reason to believe the
39 child may be an Indian child, and for every hearing thereafter,
40 including, but not limited to, the hearing at which a final

1 adoption order is to be granted. After a tribe intervenes in a
2 proceeding, the information set out in paragraphs (3), (4), (5) and
3 (7) of subdivision (e) need not be included with notice.

4 (g) Proof of the notice, including copies of notices sent and all
5 return receipts and responses received, shall be filed with the
6 court in advance of the hearing except as permitted under
7 subdivision (h).

8 (h) No proceeding shall be held until at least 10 days after
9 receipt of notice by the parent, Indian custodian, the tribe, or the
10 Bureau of Indian Affairs, except for the detention hearing,
11 provided that notice of the detention hearing shall be given as
12 soon as possible after the filing of the petition initiating the
13 proceeding and proof of the notice is filed with the court within
14 10 days after the filing of the petition. With the exception of the
15 detention hearing, the parent, Indian custodian, or the tribe shall,
16 upon request, be granted up to 20 additional days to prepare for
17 that proceeding. Nothing herein shall be construed as limiting the
18 rights of the parent, Indian custodian or tribe to more than 10
19 days notice when the lengthier notice period is required.

20 (i) With respect to giving notice to Indian tribes, a party shall
21 be subject to court sanctions if that person knowingly and
22 willfully falsifies or conceals a material fact concerning whether
23 the child is an Indian child, or counsels a party to do so.

24 SEC. 32. Section 224.3 is added to the Welfare and
25 Institutions Code, to read:

26 224.3. (a) The court, county welfare department, and the
27 probation department have an affirmative and continuing duty to
28 inquire whether a child for whom a petition under Section 300,
29 601, or 602 is to be, or has been, filed is or may be an Indian
30 child in all dependency proceedings and in any juvenile wardship
31 proceedings if the child is at risk of entering foster care or is in
32 foster care.

33 (b) The court, county welfare department, and the probation
34 department shall be deemed to know or have reason to know that
35 an Indian child is involved whenever any of the following
36 circumstances exist:

37 (1) A person having an interest in the child, including the
38 child, an officer of the court, a tribe, an Indian organization, a
39 public or private agency, or a member of the child's extended
40 family provides information suggesting the child is a member of

1 a tribe or eligible for membership in a tribe or one or more of the
2 child's biological parents, grandparents, or great-grandparents
3 are or were a member of a tribe.

4 (2) The residence or domicile of the child, the child's parents,
5 or Indian custodian is in a predominantly Indian community.

6 (3) The child or the child's family has received services or
7 benefits from a tribe or services that are available to Indians from
8 tribes or the federal government, such as the Indian Health
9 Service.

10 (c) If the court, social worker, or probation officer knows or
11 has reason to know that an Indian child is involved, the social
12 worker or probation officer is required to make further inquiry
13 regarding the possible Indian status of the child, and to do so as
14 soon as practicable, by interviewing the parents, Indian
15 custodian, and extended family members to gather the
16 information required in Section 298, contacting the Bureau of
17 Indian Affairs and the State Department of Social Services for
18 assistance in identifying the names and contact information of the
19 tribes in which the child may be a member or eligible for
20 membership in and contacting the tribes and any other person
21 that reasonably can be expected to have information regarding
22 the child's membership status or eligibility.

23 (d) If the court, social worker, or probation officer knows or
24 has reason to know that an Indian child is involved, the social
25 worker or probation officer shall provide notice in accordance
26 with Section 298.

27 (e) (1) A written determination by an Indian tribe that a child
28 is or is not a member of or eligible for membership in that tribe,
29 or testimony attesting to such status by a person authorized by
30 the tribe to provide that determination, shall be conclusive.
31 Information that the child is not enrolled or eligible for
32 enrollment in the tribe is not determinative of the child's
33 membership status unless the tribe also confirms in writing that
34 enrollment is a prerequisite for membership under tribal law or
35 custom.

36 (2) In the absence of a contrary determination by the tribe, a
37 determination by the Bureau of Indian Affairs that a child is or is
38 not a member of or eligible for membership in that tribe is
39 conclusive.

(3) If proper and adequate notice has been provided pursuant to Section 224.1, and neither a tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, the court may determine the child is not an Indian child and that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings, provided that the court shall reverse its determination and apply the act prospectively if a tribe or the Bureau of Indian Affairs submits written evidence confirming the child is an Indian child.

(f) Notwithstanding a determination that the Indian Child Welfare Act does not apply to the proceedings made in accordance with subdivision (e) of this section, if the court, social worker, or probation officer subsequently receives any information required under subdivision (e) of Section 224.2 that was not previously available or included in the notice issued under Section 224.2, the social worker or probation officer shall provide the additional information to any tribes entitled to notice under subdivision (c) of Section 224.2 and the Bureau of Indian Affairs.

SEC. 33. Section 224.4 is added to the Welfare and Institutions Code, to read:

224.4. (a) The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.

(b) Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the action may be based. With the exception of the initial petition commencing the proceedings, any report filed in connection with a hearing in an Indian child custody proceeding shall be provided to each party to the proceeding at least 10 calendar days prior to the hearing, which may be accomplished by mailing the report at least 15 calendar days prior to the hearing. The court shall grant a reasonable continuance, not to exceed 20 calendar days, upon request by any party on the ground that the report was not provided at least 10 calendar days prior to the hearing as required by this section, unless the party has expressly waived the requirement that the report be provided within the 10-day period or the court finds by clear and convincing evidence that the party's ability to proceed at the

1 hearing is not prejudiced by the lack of timely service of the
2 report.

3 SEC. 34. Section 224.5 is added to the Welfare and
4 Institutions Code, to read:

5 224.5. In an Indian child custody proceeding, the court shall
6 give full faith and credit to the public acts, records, judicial
7 proceedings, and judgments of any Indian tribe applicable to the
8 proceeding.

9 SEC. 35. Section 224.6 is added to the Welfare and
10 Institutions Code, to read:

11 224.6. (a) When testimony of a “qualified expert witness” is
12 required in an Indian child custody proceeding, a “qualified
13 expert witness” may include, but is not limited to, a social
14 worker, sociologist, physician, psychologist, traditional tribal
15 therapist and healer, spiritual leader, historian, or elder, provided
16 the individual is not an employee of the person or agency
17 recommending termination of parental rights.

18 (b) In considering whether to involuntarily place an Indian
19 child in foster care or to terminate the parental rights of the
20 parent of an Indian child, the court shall require that qualified
21 expert witnesses with specific knowledge of the child’s Indian
22 tribe testify regarding that tribe’s family organization and
23 child-rearing practices, and regarding whether the tribe’s culture,
24 customs, and laws would support the placement of the child in
25 foster care or the termination of parental rights on the grounds
26 that continued custody of the child by the parent or Indian
27 custodian is likely to result in serious emotional or physical
28 damage to the child.

29 (c) In the following descending order of preference, a qualified
30 expert witness is a person who is one of the following:

31 (1) A member of the child’s Indian tribe who is recognized by
32 the child’s tribal community as knowledgeable regarding tribal
33 customs as the customs pertain to family organization or
34 child-rearing practices.

35 (2) A member of another tribe who is formally recognized by
36 the Indian child’s tribe as having the knowledge to be a qualified
37 expert witness.

38 (3) A layperson having substantial experience in the delivery
39 of child and family services to Indians, and substantial

1 knowledge of the prevailing social and cultural standards and
2 child-rearing practices within the Indian child's tribe.

3 (4) A professional person having substantial education and
4 experience in the person's professional specialty and having
5 substantial knowledge of the prevailing social and cultural
6 standards and child-rearing practices within the Indian child's
7 tribe.

8 (5) A professional person having substantial education and
9 experience in the person's professional specialty and having
10 extensive knowledge of the customs, traditions, and values of the
11 Indian child's tribe as the customs, traditions, and values pertain
12 to family organization and child-rearing practices. Prior to
13 accepting the testimony of a qualified expert witness, the court
14 shall document the efforts made to secure a qualified expert
15 witness described in paragraphs (1), (2), (3) and (4). The efforts
16 shall include, but are not limited to, contacting the Indian child's
17 tribe's governing body, that tribe's Indian child welfare office,
18 and the tribe's social service office.

19 SEC. 36. Section 290.1 of the Welfare and Institutions Code
20 is amended to read:

21 290.1. If the probation officer or social worker determines
22 that the child shall be retained in custody, he or she shall
23 immediately file a petition pursuant to Section 332 with the clerk
24 of the juvenile court, who shall set the matter for hearing on the
25 detention hearing calendar. The probation officer or social
26 worker shall serve notice as prescribed in this section.

27 (a) Notice shall be given to the following persons whose
28 whereabouts are known or become known prior to the initial
29 petition hearing:

30 (1) The mother.

31 (2) The father or fathers, presumed and alleged.

32 (3) The legal guardian or guardians.

33 (4) The child, if the child is 10 years of age or older.

34 (5) Any known sibling of the child who is the subject of the
35 hearing if that sibling either is the subject of a dependency
36 proceeding or has been adjudged to be a dependent child of the
37 juvenile court. If the sibling is 10 years of age or older, the
38 sibling, the sibling's caregiver, and the sibling's attorney. If the
39 sibling is under 10 years of age, the sibling's caregiver and the
40 sibling's attorney. However, notice is not required to be given to

1 any sibling whose matter is calendared in the same court on the
2 same day.

3 (6) If there is no parent or guardian residing in California, or if
4 the residence is unknown, then to any adult relative residing
5 within the county or if none, the adult relative residing nearest
6 the court.

7 (7) The attorney for the parent or parents, or legal guardian or
8 guardians.

9 (8) The district attorney, if the district attorney has notified the
10 clerk of the court that he or she wishes to receive the petition,
11 containing the time, date, and place of the hearing.

12 (9) The probate department of the superior court that
13 appointed the guardian, if the child is a ward of a guardian
14 appointed pursuant to the Probate Code.

15 ~~(10) If the court knows or has reason to know that an Indian~~
16 ~~child is involved, then to the Indian custodian and the tribe of~~
17 ~~that child. If the identity or location of the parent or Indian~~
18 ~~custodian and the tribe cannot be determined, notice shall be~~
19 ~~given to the Bureau of Indian Affairs.~~

20 (b) No notice is required for a parent whose parental rights
21 have been terminated.

22 (c) The notice shall be given as soon as possible after the filing
23 of the petition. ~~In the case of an Indian child, if notice is given to~~
24 ~~the Bureau of Indian Affairs, the bureau shall have 15 days after~~
25 ~~receipt to provide the requisite notice to the parent or Indian~~
26 ~~custodian and the tribe.~~

27 (d) The notice of the initial petition hearing shall include all of
28 the following:

29 (1) The date, time, and place of the hearing.

30 (2) The name of the child.

31 (3) A copy of the petition.

32 ~~(e) Service of the notice shall be written or oral. If the person~~
33 ~~being served cannot read, notice shall be given orally. In the case~~
34 ~~of an Indian child, notice to the Bureau of Indian Affairs, if~~
35 ~~necessary, shall be by registered mail, return receipt requested.~~

36 SEC. 37. Section 290.2 of the Welfare and Institutions Code
37 is amended to read:

38 290.2. Upon the filing of a petition by a probation officer or
39 social worker, the clerk of the juvenile court shall issue notice, to

1 which shall be attached a copy of the petition, and he or she shall
2 cause the same to be served as prescribed in this section.

3 (a) Notice shall be given to the following persons whose
4 address is known or becomes known prior to the initial petition
5 hearing:

6 (1) The mother.

7 (2) The father or fathers, presumed and alleged.

8 (3) The legal guardian or guardians.

9 (4) The child, if the child is 10 years of age or older.

10 (5) Any known sibling of the child who is the subject of the
11 hearing if that sibling either is the subject of a dependency
12 proceeding or has been adjudged to be a dependent child of the
13 juvenile court. If the sibling is 10 years of age or older, the
14 sibling, the sibling's caregiver, and the sibling's attorney. If the
15 sibling is under 10 years of age, the sibling's caregiver and the
16 sibling's attorney. However, notice is not required to be given to
17 any sibling whose matter is calendared in the same court on the
18 same day.

19 (6) If there is no parent or guardian residing in California, or if
20 the residence is unknown, to any adult relative residing within
21 the county or if none, the adult relative residing nearest the court.

22 (7) Upon reasonable notification by counsel representing the
23 child, parent, or guardian, the clerk of the court shall give notice
24 to that counsel as soon as possible.

25 (8) The district attorney, if the district attorney has notified the
26 clerk of the court that he or she wishes to receive the petition,
27 containing the time, date, and place of the hearing.

28 (9) The probate department of the superior court that
29 appointed the guardian, if the child is a ward of a guardian
30 appointed pursuant to the Probate Code.

31 ~~(10) If the court knows or has reason to know that an Indian~~
32 ~~child is involved, then to the Indian custodian and the tribe of~~
33 ~~that child. If the identity or location of the parent or Indian~~
34 ~~custodian and the tribe cannot be determined, notice shall be~~
35 ~~given to the Bureau of Indian Affairs.~~

36 (b) No notice is required for a parent whose parental rights
37 have been terminated.

38 (c) Notice shall be served as follows:

39 (1) If the child is retained in custody, the notice shall be given
40 to the persons required to be noticed as soon as possible, and at

1 least five days before the hearing, unless the hearing is set to be
2 heard in less than five days in which case notice shall be given at
3 least 24 hours prior to the hearing.

4 (2) If the child is not retained in custody, the notice shall be
5 given to those persons required to be noticed at least 10 days
6 prior to the date of the hearing. If any person who is required to
7 be given notice is known to reside outside of the county, the clerk
8 of the juvenile court shall mail the notice and copy of the petition
9 by first-class mail, to that person as soon as possible after the
10 filing of the petition and at least 10 days before the time set for
11 hearing. Failure to respond to the notice is not cause for an arrest
12 or detention. In the instance of a failure to appear after notice by
13 first-class mail, the court shall direct that the notice and copy of
14 the petition be personally served on all persons required to
15 receive the notice and copy of the petition. For these purposes,
16 personal service of the notice and copy of the petition outside of
17 the county at least 10 days before the time set for hearing is
18 equivalent to service by first-class mail. Service may be waived
19 by any person by a voluntary appearance entered in the minutes
20 of the court or by a written waiver of service filed with the clerk
21 of the court at, or prior to, the hearing.

22 ~~(3) In the case of an Indian child, if notice is given to the~~
23 ~~Bureau of Indian Affairs, the bureau shall have 15 days after~~
24 ~~receipt to provide the requisite notice to the parent or Indian~~
25 ~~eustodian and the tribe.~~

26 (d) The notice of the initial petition hearing shall include all of
27 the following:

28 (1) The date, time, and place of the hearing.

29 (2) The name of the child.

30 (3) A copy of the petition.

31 ~~(e) In the case of an Indian child, notice to the Bureau of~~
32 ~~Indian Affairs, if necessary, shall be by registered mail, return~~
33 ~~receipt requested.~~

34 SEC. 38. Section 291 of the Welfare and Institutions Code is
35 amended to read:

36 291. After the initial petition hearing, the clerk of the court
37 shall cause the notice to be served in the following manner:

38 (a) Notice of the hearing shall be given to the following
39 persons:

40 (1) The mother.

1 (2) The father or fathers, presumed and alleged.

2 (3) The legal guardian or guardians.

3 (4) The child, if the child is 10 years of age or older.

4 (5) Any known sibling of the child who is the subject of the
5 hearing if that sibling either is the subject of a dependency
6 proceeding or has been adjudged to be a dependent child of the
7 juvenile court. If the sibling is 10 years of age or older, the
8 sibling, the sibling's caregiver, and the sibling's attorney. If the
9 sibling is under 10 years of age, the sibling's caregiver and the
10 sibling's attorney. However, notice is not required to be given to
11 any sibling whose matter is calendared in the same court on the
12 same day.

13 (6) Each attorney of record unless counsel of record is present
14 in court when the hearing is scheduled, then no further notice
15 need be given.

16 (7) If there is no parent or guardian residing in California, or if
17 the residence is unknown, then to any adult relative residing
18 within the county or if none, the adult relative residing nearest
19 the court.

20 ~~(8) If the court knows or has reason to know that an Indian~~
21 ~~child is involved, then to the Indian custodian and the tribe of~~
22 ~~that child. If the identity or location of the parent or Indian~~
23 ~~custodian and the tribe cannot be determined, notice shall be~~
24 ~~given to the Bureau of Indian Affairs.~~

25 (b) No notice is required for a parent whose parental rights
26 have been terminated.

27 (c) Notice shall be served as follows:

28 (1) If the child is detained, the notice shall be given to the
29 persons required to be noticed as soon as possible, and at least
30 five days before the hearing, unless the hearing is set less than
31 five days and then at least 24 hours prior to the hearing.

32 (2) If the child is not detained, the notice shall be given to
33 those persons required to be noticed at least 10 days prior to the
34 date of the hearing.

35 ~~(3) In the case of an Indian child, notice is to be given no less~~
36 ~~than 10 days before the hearing. If notice is given to the Bureau~~
37 ~~of Indian Affairs, the bureau shall have 15 days after receipt to~~
38 ~~provide the requisite notice to the parent or Indian custodian and~~
39 ~~the tribe.~~

40 (d) The notice shall include all of the following:

- 1 (1) The name and address of the person notified.
- 2 (2) The nature of the hearing.
- 3 (3) Each section and subdivision under which the proceeding
- 4 has been initiated.
- 5 (4) The date, time, and place of the hearing.
- 6 (5) The name of the child upon whose behalf the petition has
- 7 been brought.
- 8 (6) A statement that:
- 9 (A) If they fail to appear, the court may proceed without them.
- 10 (B) The child, parent, guardian, Indian custodian, or adult
- 11 relative to whom notice is required to be given is entitled to have
- 12 an attorney present at the hearing.
- 13 (C) If the parent, guardian, Indian custodian, or adult relative
- 14 is indigent and cannot afford an attorney, and desires to be
- 15 represented by an attorney, the parent, guardian, Indian
- 16 custodian, or adult relative shall promptly notify the clerk of the
- 17 juvenile court.
- 18 (D) If an attorney is appointed to represent the parent,
- 19 guardian, Indian custodian, or adult relative, the represented
- 20 person shall be liable for all or a portion of the costs to the extent
- 21 of his or her ability to pay.
- 22 (E) The parent, guardian, Indian custodian, or adult relative
- 23 may be liable for the costs of support of the child in any
- 24 out-of-home placement.
- 25 (7) A copy of the petition.
- 26 ~~(8) In the case of an Indian child, the notice shall contain a~~
- 27 ~~statement that the parent or Indian custodian and the tribe have a~~
- 28 ~~right to intervene at any point in the proceedings. The notice~~
- 29 ~~shall also include a statement that the parent or Indian custodian~~
- 30 ~~and the tribe shall, upon request, be granted up to 20 additional~~
- 31 ~~days to prepare for the proceedings.~~
- 32 (e) Service of the notice of the hearing shall be given in the
- 33 following manner:
- 34 (1) If the child is detained and the persons required to be
- 35 noticed are not present at the initial petition hearing, they shall be
- 36 noticed by personal service or by certified mail, return receipt
- 37 requested.
- 38 (2) If the child is detained and the persons required to be
- 39 noticed are present at the initial petition hearing, they shall be
- 40 noticed by personal service or by first-class mail.

1 (3) If the child is not detained, the persons required to be
2 noticed shall be noticed by personal service or by first-class mail,
3 unless the person to be served is known to reside outside the
4 county, in which case service shall be by first-class mail.

5 ~~(4) In the case of an Indian child, notice shall be by registered~~
6 ~~mail, return receipt requested.~~

7 (f) Any of the notices required to be given under this section
8 or Sections 290.1 and 290.2 may be waived by a party in person
9 or through his or her attorney, or by a signed written waiver filed
10 on or before the date scheduled for the hearing.

11 SEC. 39. Section 292 of the Welfare and Institutions Code is
12 amended to read:

13 292. The social worker or probation officer shall give notice
14 of the review hearing held pursuant to Section 364 in the
15 following manner:

16 (a) Notice of the hearing shall be given to the following
17 persons:

18 (1) The mother.

19 (2) The presumed father or any father receiving services.

20 (3) The legal guardian or guardians.

21 (4) The child, if the child is 10 years of age or older.

22 (5) Any known sibling of the child who is the subject of the
23 hearing if that sibling either is the subject of a dependency
24 proceeding or has been adjudged to be a dependent child of the
25 juvenile court. If the sibling is 10 years of age or older, the
26 sibling, the sibling's caregiver, and the sibling's attorney. If the
27 sibling is under 10 years of age, the sibling's caregiver and the
28 sibling's attorney. However, notice is not required to be given to
29 any sibling whose matter is calendared in the same court on the
30 same day.

31 (6) Each attorney of record, if that attorney was not present at
32 the time that the hearing was set by the court.

33 ~~(7) If the court knows or has reason to know that an Indian~~
34 ~~child is involved, then to the Indian custodian and the tribe of~~
35 ~~that child. If the identity or location of the parent or Indian~~
36 ~~custodian and the tribe cannot be determined, notice shall be~~
37 ~~given to the Bureau of Indian Affairs.~~

38 (b) No notice is required for a parent whose parental rights
39 have been terminated.

(c) The notice of the hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. ~~In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.~~

(d) ~~(1)~~ The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice shall also include a statement that the child and the parent or parents or legal guardian or guardians have a right to be present at the hearing, to be represented by counsel at the hearing and the procedure for obtaining appointed counsel, and to present evidence regarding the proper disposition of the case. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

~~(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.~~

(e) ~~(1)~~ Service of the notice shall be by personal service, by first-class mail, or by certified mail, return receipt requested, addressed to the last known address of the person to be noticed.

~~(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.~~

SEC. 40. Section 293 of the Welfare and Institutions Code is amended to read:

293. The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21 or 366.22 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency

1 proceeding or has been adjudged to be a dependent child of the
2 juvenile court. If the sibling is 10 years of age or older, the
3 sibling, the sibling's caregiver, and the sibling's attorney. If the
4 sibling is under 10 years of age, the sibling's caregiver and the
5 sibling's attorney. However, notice is not required to be given to
6 any sibling whose matter is calendared in the same court on the
7 same day.

8 (6) In the case of a child removed from the physical custody of
9 his or her parent or legal guardian, the foster parents, relative
10 caregivers, community care facility, or foster family agency
11 having custody of the child. In a case in which a foster family
12 agency is notified of the hearing pursuant to this section, and the
13 child resides in a foster home certified by the foster family
14 agency, the foster family agency shall provide timely notice of
15 the hearing to the child's caregivers.

16 (7) Each attorney of record if that attorney was not present at
17 the time that the hearing was set by the court.

18 ~~(8) If the court knows or has reason to know that an Indian~~
19 ~~child is involved, then to the Indian custodian and the tribe of~~
20 ~~that child. If the identity or location of the parent or Indian~~
21 ~~custodian and the tribe cannot be determined, notice shall be~~
22 ~~given to the Bureau of Indian Affairs.~~

23 (b) No notice is required for a parent whose parental rights
24 have been terminated.

25 (c) The notice of hearing shall be served not earlier than 30
26 days, nor later than 15 days, before the hearing. ~~In the case of an~~
27 ~~Indian child, if notice is given to the Bureau of Indian Affairs,~~
28 ~~the bureau shall have 15 days after receipt to provide the~~
29 ~~requisite notice to the parent or Indian custodian and the tribe.~~
30 ~~This subdivision does not affect the tribe's right to intervene at~~
31 ~~any point in the proceedings.~~

32 (d) ~~(1)~~ The notice shall contain a statement regarding the
33 nature of the hearing to be held and any change in the custody or
34 status of the child being recommended by the supervising
35 agency. If the notice is to the child, parent or parents, or legal
36 guardian or guardians, the notice shall also advise them of the
37 right to be present, the right to be represented by counsel, the
38 right to request counsel, and the right to present evidence. The
39 notice shall also state that if the parent or parents or legal

1 guardian or guardians fail to appear, the court may proceed
2 without them.

3 ~~(2) In the case of an Indian child, the notice shall contain a~~
4 ~~statement that the parent or Indian custodian and the tribe have a~~
5 ~~right to intervene at any point in the proceedings. The notice~~
6 ~~shall also include a statement that the parent or Indian custodian~~
7 ~~and the tribe shall, upon request, be granted up to 20 additional~~
8 ~~days to prepare for the proceedings.~~

9 (e) ~~(f)~~ Service of the notice shall be by first-class mail
10 addressed to the last known address of the person to be noticed or
11 by personal service on the person. Service of a copy of the notice
12 shall be by personal service or by certified mail, return receipt
13 requested, or any other form of notice that is equivalent to
14 service by first-class mail.

15 ~~(2) In the case of an Indian child, notice shall be by registered~~
16 ~~mail, return receipt requested.~~

17 (f) Notice to a foster parent, a relative caregiver, a certified
18 foster parent who has been approved for adoption, or the State
19 Department of Social Services when it is acting as an adoption
20 agency in counties that are not served by a county adoption
21 agency or by a licensed county adoption agency, shall indicate
22 that the person notified may attend all hearings or may submit
23 any information he or she deems relevant to the court in writing.

24 SEC. 41. Section 294 of the Welfare and Institutions Code is
25 amended to read:

26 294. The social worker or probation officer shall give notice
27 of a selection and implementation hearing held pursuant to
28 Section 366.26 in the following manner:

29 (a) Notice of the hearing shall be given to the following
30 persons:

- 31 (1) The mother.
- 32 (2) The fathers, presumed and alleged.
- 33 (3) The child, if the child is 10 years of age or older.
- 34 (4) Any known sibling of the child who is the subject of the
35 hearing if that sibling either is the subject of a dependency
36 proceeding or has been adjudged to be a dependent child of the
37 juvenile court. If the sibling is 10 years of age or older, the
38 sibling, the sibling's caregiver, and the sibling's attorney. If the
39 sibling is under 10 years of age, the sibling's caregiver and the
40 sibling's attorney. However, notice is not required to be given to

1 any sibling whose matter is calendared in the same court on the
2 same day.

3 (5) The grandparents of the child, if their address is known and
4 if the parent's whereabouts are unknown.

5 (6) All counsel of record.

6 ~~(7) If the court knows or has reason to know that an Indian~~
7 ~~child is involved, then to the Indian custodian and the tribe of~~
8 ~~that child. If the identity or location of the parent or Indian~~
9 ~~custodian and the tribe cannot be determined, notice shall be~~
10 ~~given to the Bureau of Indian Affairs.~~

11 (b) The following persons shall not be notified of the hearing:

12 (1) A parent who has relinquished the child to the State
13 Department of Social Services or to a licensed adoption agency
14 for adoption, and the relinquishment has been accepted and filed
15 with notice as required under Section 8700 of the Family Code.

16 (2) An alleged father who has denied paternity and has
17 executed a waiver of the right to notice of further proceedings.

18 (3) A parent whose parental rights have been terminated.

19 (c) (1) Service of the notice shall be completed at least 45
20 days before the hearing date. Service is deemed complete at the
21 time the notice is personally delivered to the person named in the
22 notice or 10 days after the notice has been placed in the mail, or
23 at the expiration of the time prescribed by the order for
24 publication.

25 ~~(2) In the case of an Indian child, notice to the Indian~~
26 ~~custodian and the tribe shall be completed at least 10 days before~~
27 ~~the hearing.~~

28 ~~(3) In the case of an Indian child, if notice is given to the~~
29 ~~Bureau of Indian Affairs, the bureau shall have 15 days after~~
30 ~~receipt to provide the requisite notice to the parent or Indian~~
31 ~~custodian and the tribe.~~

32 ~~(4) Service of notice in cases where publication is ordered~~
33 ~~shall be completed at least 30 days before the date of the hearing.~~

34 (d) Regardless of the type of notice required, or the manner in
35 which it is served, once the court has made the initial finding that
36 notice has properly been given to the parent, or to any person
37 entitled to receive notice pursuant to this section, subsequent
38 notice for any continuation of a Section 366.26 hearing may be
39 by first-class mail to any last known address, by an order made
40 pursuant to Section 296, or by any other means that the court

1 determines is reasonably calculated, under any circumstance, to
2 provide notice of the continued hearing. However, if the
3 recommendation changes from the recommendation contained in
4 the notice previously found to be proper, notice shall be provided
5 to the parent, and to any person entitled to receive notice
6 pursuant to this section, regarding that subsequent hearing.

7 (e) The notice shall contain the following information:

8 (1) The date, time, and place of the hearing.

9 (2) The right to appear.

10 (3) The parents' right to counsel.

11 (4) The nature of the proceedings.

12 (5) The recommendation of the supervising agency.

13 (6) A statement that, at the time of hearing, the court is
14 required to select a permanent plan of adoption, legal
15 guardianship, or long-term foster care for the child.

16 ~~(7) In the case of an Indian child, the notice shall contain a~~
17 ~~statement that the parent or Indian custodian and the tribe have a~~
18 ~~right to intervene at any point in the proceedings. The notice~~
19 ~~shall also include a statement that the parent or Indian custodian~~
20 ~~and the tribe shall, upon request, be granted up to 20 additional~~
21 ~~days to prepare for the proceedings.~~

22 (f) Notice to the parents may be given in any one of the
23 following manners:

24 (1) If the parent is present at the hearing at which the court
25 schedules a hearing pursuant to Section 366.26, the court shall
26 advise the parent of the date, time, and place of the proceedings,
27 their right to counsel, the nature of the proceedings, and the
28 requirement that at the proceedings the court shall select and
29 implement a plan of adoption, legal guardianship, or long-term
30 foster care for the child. The court shall direct the parent to
31 appear for the proceedings and then direct that the parent be
32 notified thereafter by first-class mail to the parent's usual place
33 of residence or business only.

34 (2) Certified mail, return receipt requested, to the parent's last
35 known mailing address. This notice shall be sufficient if the child
36 welfare agency receives a return receipt signed by the parent.

37 (3) Personal service to the parent named in the notice.

38 (4) Delivery to a competent person who is at least 18 years of
39 age at the parent's usual place of residence or business, and

1 thereafter mailed to the parent named in the notice by first-class
2 mail at the place where the notice was delivered.

3 (5) If the residence of the parent is outside the state, service
4 may be made as described in paragraph (1), (3), or (4) or by
5 certified mail, return receipt requested.

6 (6) If the recommendation of the probation officer or social
7 worker is legal guardianship or long-term foster care, service
8 may be made by first-class mail to the parent's usual place of
9 residence or business.

10 (7) If the parent's whereabouts are unknown and the parent
11 cannot, with reasonable diligence, be served in any manner
12 specified in paragraphs (1) to (6), inclusive, the petitioner shall
13 file an affidavit with the court at least 75 days before the hearing
14 date, stating the name of the parent and describing the efforts
15 made to locate and serve the parent.

16 (A) If the court determines that there has been due diligence in
17 attempting to locate and serve the parent and the probation
18 officer or social worker recommends adoption, service shall be to
19 that parent's attorney of record, if any, by certified mail, return
20 receipt requested. If the parent does not have an attorney of
21 record, the court shall order that service be made by publication
22 of citation requiring the parent to appear at the date, time, and
23 place stated in the citation, and that the citation be published in a
24 newspaper designated as most likely to give notice to the parent.
25 Publication shall be made once a week for four consecutive
26 weeks. Whether notice is to the attorney of record or by
27 publication, the court shall also order that notice be given to the
28 grandparents of the child by first-class mail.

29 (B) If the court determines that there has been due diligence in
30 attempting to locate and serve the parent and the probation
31 officer or social worker recommends legal guardianship or
32 long-term foster care, no further notice is required to the parent,
33 but the court shall order that notice be given to the grandparents
34 of the child by first-class mail.

35 (C) In any case where the residence of the parent becomes
36 known, notice shall immediately be served upon the parent as
37 provided for in either paragraph (2), (3), (4), (5), or (6).

38 (8) If the identity of one or both of the parents, or alleged
39 parents, of the child is unknown, or if the name of one or both
40 parents is uncertain, then that fact shall be set forth in the

1 affidavit and the court, if ordering publication, shall order the
2 published citation to be directed to either the father or mother, or
3 both, of the child, and to all persons claiming to be the father or
4 mother of the child, naming and otherwise describing the child.

5 (g) Notice to the child and all counsel of record shall be by
6 first-class mail.

7 ~~(h) In the case of an Indian child, notice to the tribe shall be by~~
8 ~~registered mail, return receipt requested.~~

9 ~~(i)~~ Notwithstanding subdivision (a), if the attorney of record is
10 present at the time the court schedules a hearing pursuant to
11 Section 366.26, no further notice is required, except as required
12 by subparagraph (A) of paragraph (7) of subdivision (f).

13 ~~(j)~~

14 (i) This section shall also apply to children adjudged wards
15 pursuant to Section 727.31.

16 SEC. 42. Section 295 of the Welfare and Institutions Code is
17 amended to read:

18 295. The social worker or probation officer shall give notice
19 of review hearings held pursuant to Section 366.3 in the
20 following manner:

21 (a) Notice of the hearing shall be given to the following
22 persons:

23 (1) The mother.

24 (2) The presumed father.

25 (3) The legal guardian or guardians.

26 (4) The child, if the child is 10 years of age or older.

27 (5) Any known sibling of the child who is the subject of the
28 hearing if that sibling either is the subject of a dependency
29 proceeding or has been adjudged to be a dependent child of the
30 juvenile court. If the sibling is 10 years of age or older, the
31 sibling, the sibling's caregiver, and the sibling's attorney. If the
32 sibling is under 10 years of age, the sibling's caregiver and the
33 sibling's attorney. However, notice is not required to be given to
34 any sibling whose matter is calendared in the same court on the
35 same day.

36 (6) The foster parents, ~~Indian custodian~~, relative caregivers,
37 community care facility, or foster family agency having physical
38 custody of the child in the case of a child removed from the
39 physical custody of the parents or legal guardian.

1 (7) The attorney of record if that attorney of record was not
2 present at the time that the hearing was set by the court.

3 (8) The alleged father or fathers, but only if the
4 recommendation is to set a new hearing pursuant to Section
5 366.26.

6 ~~(9) If the court knows or has reason to know that an Indian~~
7 ~~child is involved, then to the Indian custodian and the tribe of~~
8 ~~that child. If the identity or location of the parent or Indian~~
9 ~~custodian and the tribe cannot be determined, notice shall be~~
10 ~~given to the Bureau of Indian Affairs.~~

11 (b) No notice is required for a parent whose parental rights
12 have been terminated.

13 (c) The notice of the review hearing shall be served no earlier
14 than 30 days, nor later than 15 days, before the hearing. ~~In the~~
15 ~~case of an Indian child, if notice is given to the Bureau of Indian~~
16 ~~Affairs, the bureau shall have 15 days after receipt to provide the~~
17 ~~requisite notice to the parent or Indian custodian and the tribe.~~

18 (d) ~~(1)~~ The notice of the review hearing shall contain a
19 statement regarding the nature of the hearing to be held, any
20 recommended change in the custody or status of the child, and
21 any recommendation that the court set a new hearing pursuant to
22 Section 366.26 in order to select a more permanent plan.

23 ~~(2) In the case of an Indian child, the notice shall contain a~~
24 ~~statement that the parent or Indian custodian and the tribe have a~~
25 ~~right to intervene at any point in the proceedings. The notice~~
26 ~~shall also include a statement that the parent or Indian custodian~~
27 ~~and the tribe shall, upon request, be granted up to 20 additional~~
28 ~~days to prepare for the proceedings.~~

29 (e) Service of notice shall be by first-class mail addressed to
30 the last known address of the person to be provided notice. ~~In the~~
31 ~~case of an Indian child, notice shall be by registered mail, return~~
32 ~~receipt requested.~~

33 (f) If the child is ordered into a permanent plan of legal
34 guardianship, and subsequently a petition to terminate or modify
35 the guardianship is filed, the probation officer or social worker
36 shall serve notice of the petition not less than 15 court days prior
37 to the hearing on all persons listed in subdivision (a) and on the
38 court that established legal guardianship if it is in another county.

39 SEC. 43. Section 297 of the Welfare and Institutions Code is
40 amended to read:

1 297. (a) Notice required for an initial petition filed pursuant
2 to Section 300 is applicable to a subsequent petition filed
3 pursuant to Section 342.

4 (b) Upon the filing of a supplemental petition pursuant to
5 Section 387, the clerk of the juvenile court shall immediately set
6 the matter for hearing within 30 days of the date of the filing, and
7 the social worker or probation officer shall cause notice thereof
8 to be served upon the persons required by, and in the manner
9 prescribed by, Sections 290.1, 290.2, and 291.

10 (c) If a petition for modification has been filed pursuant to
11 Section 388, and it appears that the best interest of the child may
12 be promoted by the proposed change of the order, the recognition
13 of a sibling relationship, or the termination of jurisdiction, the
14 court shall order that a hearing be held and shall give prior
15 notice, or cause prior notice to be given, to the social worker or
16 probation officer and to the child's attorney of record, or if there
17 is no attorney of record for the child, to the child, and his or her
18 parent or parents or legal guardian or guardians ~~or Indian~~
19 ~~eustodian and the tribe~~ in the manner prescribed by Section 291
20 unless a different manner is prescribed by the court.

21 SEC. 44. Section 305.5 of the Welfare and Institutions Code
22 is amended to read:

23 305.5. (a) ~~Where~~ *If an Indian child, who is a ward of a tribal*
24 *court or* resides or is domiciled within a reservation of an Indian
25 tribe that has *exclusive jurisdiction over child custody*
26 *proceedings as recognized in Section 1911 of Title 25 of the*
27 *United States Code or* reassumed exclusive jurisdiction over
28 Indian child custody proceedings pursuant to Section 1918 of
29 Title 25 of the United States Code, has been removed by a state
30 or local authority from the custody of his or her parents or Indian
31 custodian, the state or local authority shall provide notice of the
32 removal to the tribe no later than the next working day following
33 the removal and shall provide all relevant documentation to the
34 tribe regarding the removal and the child's identity. If the tribe
35 determines that the child is an Indian child, the state or local
36 authority shall transfer the child custody proceeding to the tribe
37 within 24 hours after receipt of written notice from the tribe of
38 that determination.

39 (b) ~~As used in this section, the terms "Indian child" and~~
40 ~~"Indian child custody proceedings" shall be defined as provided~~

~~in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)~~ In the case of an Indian child who is not domiciled or residing within a reservation of an Indian tribe or who resides or is domiciled within a reservation of an Indian tribe who does not have exclusive jurisdiction over child custody proceedings pursuant to Section 1911 or 1918 of Title 25 of the United States Code, the court shall transfer such proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, if any, or the child's tribe, unless the court finds good cause not to transfer. The court shall dismiss the proceeding or terminate jurisdiction only after receiving proof that the tribal court has accepted the transfer.

(c) (1) If a petition to transfer proceedings as described in subdivision (b) is filed, the court shall find good cause to deny the petition only if one or more of the following circumstances are shown to exist:

- (A) One or both of the child's parents object to the transfer.
- (B) The child's tribe does not have a "tribal court" as defined in Section 1910 of Title 25 of the United States Code.
- (C) The tribal court of the child's tribe declines the transfer.
- (D) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.

(2) Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems may not be considered in a determination that good cause exists.

(d) An Indian child's domicile or place of residence is determined by that of his or her parents or Indian custodian.

(e) If any petitioner in an Indian child custody proceeding has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to his parent or Indian custodian, unless returning the child to the parent or Indian custodian would

1 *subject the child to a substantial and immediate danger or threat*
2 *of danger.*

3 SEC. 45. Section 317 of the Welfare and Institutions Code is
4 amended to read:

5 317. (a) When it appears to the court that a parent, *Indian*
6 *custodian*, or guardian of the child desires counsel but is
7 presently financially unable to afford and cannot for that reason
8 employ counsel, the court may appoint counsel as provided in
9 this section.

10 (b) When it appears to the court that a parent, *Indian*
11 *custodian*, or guardian of the child is presently financially unable
12 to afford and cannot for that reason employ counsel, and the
13 child has been placed in out-of-home care, or the petitioning
14 agency is recommending that the child be placed in out-of-home
15 care, the court shall appoint counsel, unless the court finds that
16 the parent, *Indian custodian*, or guardian has made a knowing
17 and intelligent waiver of counsel as provided in this section.

18 (c) Where a child is not represented by counsel, the court shall
19 appoint counsel for the child unless the court finds that the child
20 would not benefit from the appointment of counsel. The court
21 shall state on the record its reasons for that finding. A primary
22 responsibility of any counsel appointed to represent a child
23 pursuant to this section shall be to advocate for the protection,
24 safety, and physical and emotional well-being of the child.
25 Counsel for the child may be a district attorney, public defender,
26 or other member of the bar, provided that the counsel does not
27 represent another party or county agency whose interests conflict
28 with the child's. The fact that the district attorney represents the
29 child in a proceeding pursuant to Section 300 as well as conducts
30 a criminal investigation or files a criminal complaint or
31 information arising from the same or reasonably related set of
32 facts as the proceeding pursuant to Section 300 is not in and of
33 itself a conflict of interest. The court may fix the compensation
34 for the services of appointed counsel. The appointed counsel
35 shall have a caseload and training that assures adequate
36 representation of the child. The Judicial Council shall promulgate
37 rules of court that establish caseload standards, training
38 requirements, and guidelines for appointed counsel for children
39 and shall adopt rules as required by Section 326.5 no later than
40 July 1, 2001.

1 (d) The counsel appointed by the court shall represent the
2 parent, guardian, *Indian custodian*, or child at the detention
3 hearing and at all subsequent proceedings before the juvenile
4 court. Counsel shall continue to represent the parent, *guardian*,
5 *Indian custodian*, or child unless relieved by the court upon the
6 substitution of other counsel or for cause. The representation
7 shall include representing the parent, *guardian*, *Indian custodian*,
8 or the child in termination proceedings and in those proceedings
9 relating to the institution or setting aside of a legal guardianship.

10 (e) The counsel for the child shall be charged in general with
11 the representation of the child's interests. To that end, the
12 counsel shall make or cause to have made any further
13 investigations that he or she deems in good faith to be reasonably
14 necessary to ascertain the facts, including the interviewing of
15 witnesses, and he or she shall examine and cross-examine
16 witnesses in both the adjudicatory and dispositional hearings. He
17 or she may also introduce and examine his or her own witnesses,
18 make recommendations to the court concerning the child's
19 welfare, and participate further in the proceedings to the degree
20 necessary to adequately represent the child. In any case in which
21 the child is four years of age or older, counsel shall interview the
22 child to determine the child's wishes and to assess the child's
23 well-being, and shall advise the court of the child's wishes.
24 Counsel for the child shall not advocate for the return of the child
25 if, to the best of his or her knowledge, that return conflicts with
26 the protection and safety of the child. In addition counsel shall
27 investigate the interests of the child beyond the scope of the
28 juvenile proceeding and report to the court other interests of the
29 child that may need to be protected by the institution of other
30 administrative or judicial proceedings. The attorney representing
31 a child in a dependency proceeding is not required to assume the
32 responsibilities of a social worker and is not expected to provide
33 nonlegal services to the child. The court shall take whatever
34 appropriate action is necessary to fully protect the interests of the
35 child.

36 (f) Either the child or the counsel for the child, with the
37 informed consent of the child if the child is found by the court to
38 be of sufficient age and maturity to so consent, may invoke the
39 psychotherapist-client privilege, physician-patient privilege, and
40 clergyman-penitent privilege; and if the child invokes the

1 privilege, counsel may not waive it, but if counsel invokes the
2 privilege, the child may waive it. Counsel shall be holder of these
3 privileges if the child is found by the court not to be of sufficient
4 age and maturity to so consent. For the sole purpose of fulfilling
5 his or her obligation to provide legal representation of the child,
6 counsel for a child shall have access to all records with regard to
7 the child maintained by a health care facility, as defined in
8 Section 1545 of the Penal Code, health care providers, as defined
9 in Section 6146 of the Business and Professions Code, a
10 physician and surgeon or other health practitioner as defined in
11 Section 11165.8 of the Penal Code or a child care custodian, as
12 defined in Section 11165.7 of the Penal Code. Notwithstanding
13 any other law, counsel shall be given access to all records
14 relevant to the case which are maintained by state or local public
15 agencies. All information requested from a child protective
16 agency regarding a child who is in protective custody, or from a
17 child's guardian ad litem, shall be provided to the child's counsel
18 within 30 days of the request.

19 (g) In a county of the third class, if counsel is to be provided to
20 a child at county expense other than by counsel for the agency,
21 the court shall first utilize the services of the public defender
22 prior to appointing private counsel, to provide legal counsel.
23 Nothing in this subdivision shall be construed to require the
24 appointment of the public defender in any case in which the
25 public defender has a conflict of interest. In the interest of justice,
26 a court may depart from that portion of the procedure requiring
27 appointment of the public defender after making a finding of
28 good cause and stating the reasons therefor on the record.

29 (h) In a county of the third class, if counsel is to be appointed
30 for a parent, *Indian custodian*, or guardian at county expense, the
31 court shall first utilize the services of the alternate public
32 defender, prior to appointing private counsel, to provide legal
33 counsel. Nothing in this subdivision shall be construed to require
34 the appointment of the alternate public defender in any case in
35 which the public defender has a conflict of interest. In the interest
36 of justice, a court may depart from that portion of the procedure
37 requiring appointment of the alternate public defender after
38 making a finding of good cause and stating the reasons therefor
39 on the record.

1 SEC. 46. Section 360.6 of the Welfare and Institutions Code
2 is repealed.

3 ~~360.6. (a) The Legislature finds and declares the following:~~

4 ~~(1) There is no resource that is more vital to the continued~~
5 ~~existence and integrity of Indian tribes than their children, and~~
6 ~~the State of California has an interest in protecting Indian~~
7 ~~children who are members of, or are eligible for membership in,~~
8 ~~an Indian tribe.~~

9 ~~(2) It is in the interest of an Indian child that the child's~~
10 ~~membership in the child's Indian tribe and connection to the~~
11 ~~tribal community be encouraged and protected.~~

12 ~~(b) In all Indian child custody proceedings, as defined in the~~
13 ~~federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.),~~
14 ~~the court shall consider all of the findings contained in~~
15 ~~subdivision (a), strive to promote the stability and security of~~
16 ~~Indian tribes and families, comply with the federal Indian Child~~
17 ~~Welfare Act, and seek to protect the best interest of the child.~~

18 ~~(c) A determination by an Indian tribe that an unmarried~~
19 ~~person, who is under the age of 18 years, is either (1) a member~~
20 ~~of an Indian tribe or (2) eligible for membership in an Indian~~
21 ~~tribe and a biological child of a member of an Indian tribe shall~~
22 ~~constitute a significant political affiliation with the tribe and shall~~
23 ~~require the application of the federal Indian Child Welfare Act to~~
24 ~~the proceedings.~~

25 SEC. 47. Section 360.8 is added to the Welfare and
26 Institutions Code, to read:

27 360.8. (a) When a proceeding under this chapter involves a
28 child who is Indian but who does not meet the definition of
29 "Indian child" in the Indian Child Welfare Act (25 U.S.C. Sec.
30 1901 et seq.), the court may recognize the child's tribe and grant
31 standing to participate as a party in the proceeding. The tribe
32 may:

33 (1) Be present at the hearing.

34 (2) Be represented by retained counsel or a representative of
35 the tribe designated by the tribe to intervene on behalf of the
36 tribe, provided that when the tribe appears as a party by a
37 representative of the tribe, the name of the representative and a
38 statement of authorization for that individual to appear as the
39 tribe shall be submitted to the court in the form of a tribal

1 resolution or other document evidencing an official act of the
2 tribe.

3 (3) Address the court.

4 (4) Receive notice of hearings.

5 (5) Examine all court documents relating to the proceeding.

6 (6) Present evidence.

7 (7) Submit written reports and recommendations to the court.

8 (8) Perform other duties and responsibilities as requested or
9 approved by the court.

10 (b) Subdivision (a) applies when either:

11 (1) The child is not eligible for membership in his or her tribe
12 but is the biological grandchild of a member of the tribe or
13 resides or is domiciled within the boundaries of an Indian
14 reservation.

15 (2) The child or his or her biological parent or grandparent is a
16 member of a tribe that is not recognized as eligible for the
17 services provided to Indians by the Secretary of the Interior.
18 Those tribes include, but are not limited to, any tribe, band, or
19 nation recognized as an Indian tribe by any state or local
20 government agency or by Canada or any of its provinces.

21 SEC. 48. Section 361 of the Welfare and Institutions Code is
22 amended to read:

23 361. (a) In all cases in which a minor is adjudged a dependent
24 child of the court on the ground that the minor is a person
25 described by Section 300, the court may limit the control to be
26 exercised over the dependent child by any parent or guardian and
27 shall by its order clearly and specifically set forth all those
28 limitations. Any limitation on the right of the parent or guardian
29 to make educational decisions for the child shall be specifically
30 addressed in the court order. The limitations may not exceed
31 those necessary to protect the child. If the court specifically
32 limits the right of the parent or guardian to make educational
33 decisions for the child, the court shall at the same time appoint a
34 responsible adult to make educational decisions for the child until
35 one of the following occurs:

36 (1) The minor reaches 18 years of age, unless the child
37 chooses not to make educational decisions for himself or herself,
38 or is deemed by the court to be incompetent.

39 (2) Another responsible adult is appointed to make educational
40 decisions for the minor pursuant to this section.

1 (3) The right of the parent or guardian to make educational
2 decisions for the minor is fully restored.

3 (4) A successor guardian or conservator is appointed.

4 (5) The child is placed into a planned permanent living
5 arrangement pursuant to paragraph (3) of subdivision (g) of
6 Section 366.21, Section 366.22, or Section 366.26, at which time
7 the foster parent, relative caretaker, or nonrelative extended
8 family member as defined in Section 362.7 has the right to
9 represent the child in educational matters pursuant to Section
10 56055 of the Education Code.

11 An individual who would have a conflict of interest in
12 representing the child may not be appointed to make educational
13 decisions. For purposes of this section, “an individual who would
14 have a conflict of interest,” means a person having any interests
15 that might restrict or bias his or her ability to make educational
16 decisions, including, but not limited to, those conflicts of interest
17 prohibited by Section 1126 of the Government Code, and the
18 receipt of compensation or attorneys’ fees for the provision of
19 services pursuant to this section. A foster parent may not be
20 deemed to have a conflict of interest solely because he or she
21 receives compensation for the provision of services pursuant to
22 this section.

23 If the court is unable to appoint a responsible adult to make
24 educational decisions for the child and paragraphs (1) to (5),
25 inclusive, do not apply, and the child has either been referred to
26 the local educational agency for special education and related
27 services, or has a valid individualized education program, the
28 court shall refer the child to the local educational agency for
29 appointment of a surrogate parent pursuant to Section 7579.5 of
30 the Government Code.

31 All educational and school placement decisions shall seek to
32 ensure that the child is in the least restrictive educational
33 programs and has access to the academic resources, services, and
34 extracurricular and enrichment activities that are available to all
35 pupils. In all instances, educational and school placement
36 decisions shall be based on the best interests of the child.

37 (b) Subdivision (a) does not limit the ability of a parent to
38 voluntarily relinquish his or her child to the State Department of
39 Social Services or to a licensed county adoption agency at any

1 time while the child is a dependent child of the juvenile court, if
2 the department or agency is willing to accept the relinquishment.

3 (c) A dependent child may not be taken from the physical
4 custody of his or her parents or guardian or guardians with whom
5 the child resides at the time the petition was initiated, unless the
6 juvenile court finds clear and convincing evidence of any of the
7 following:

8 (1) There is a substantial danger to the physical health, safety,
9 protection, or physical or emotional well-being of the minor or
10 would be if the minor were returned home, and there are no
11 reasonable means by which the minor's physical health can be
12 protected without removing the minor from the minor's parents'
13 or guardians' physical custody. The fact that a minor has been
14 adjudicated a dependent child of the court pursuant to
15 subdivision (e) of Section 300 shall constitute prima facie
16 evidence that the minor cannot be safely left in the custody of the
17 parent or guardian with whom the minor resided at the time of
18 injury. The court shall consider, as a reasonable means to protect
19 the minor, the option of removing an offending parent or
20 guardian from the home. The court shall also consider, as a
21 reasonable means to protect the minor, allowing a nonoffending
22 parent or guardian to retain custody as long as that parent or
23 guardian presents a plan acceptable to the court demonstrating
24 that he or she will be able to protect the child from future harm.

25 (2) The parent or guardian of the minor is unwilling to have
26 physical custody of the minor, and the parent or guardian has
27 been notified that if the minor remains out of their physical
28 custody for the period specified in Section 366.26, the minor may
29 be declared permanently free from their custody and control.

30 (3) The minor is suffering severe emotional damage, as
31 indicated by extreme anxiety, depression, withdrawal, or
32 untoward aggressive behavior toward himself or herself or
33 others, and there are no reasonable means by which the minor's
34 emotional health may be protected without removing the minor
35 from the physical custody of his or her parent or guardian.

36 (4) The minor or a sibling of the minor has been sexually
37 abused, or is deemed to be at substantial risk of being sexually
38 abused, by a parent, guardian, or member of his or her household,
39 or other person known to his or her parent, and there are no
40 reasonable means by which the minor can be protected from

1 further sexual abuse or a substantial risk of sexual abuse without
2 removing the minor from his or her parent or guardian, or the
3 minor does not wish to return to his or her parent or guardian.

4 (5) The minor has been left without any provision for his or
5 her support, or a parent who has been incarcerated or
6 institutionalized cannot arrange for the care of the minor, or a
7 relative or other adult custodian with whom the child has been
8 left by the parent is unwilling or unable to provide care or
9 support for the child and the whereabouts of the parent is
10 unknown and reasonable efforts to locate him or her have been
11 unsuccessful.

12 (6) *In the case of an Indian child, the continued custody of the*
13 *child by the parent or Indian custodian is likely to result in*
14 *serious emotional or physical damage to the child, and such*
15 *finding is supported by testimony of a "qualified expert witness"*
16 *as defined in Section 224.6.*

17 (d) The court shall make a determination as to whether
18 reasonable efforts were made to prevent or to eliminate the need
19 for removal of the minor from his or her home or, if the minor is
20 removed for one of the reasons stated in paragraph (5) of
21 subdivision (c), whether it was reasonable under the
22 circumstances not to make any of those efforts, *or, in the case of*
23 *an Indian child, whether active efforts within the meaning of*
24 *Section 361.7 were made and that these efforts have proved*
25 *unsuccessful.* The court shall state the facts on which the decision
26 to remove the minor is based.

27 (e) The court shall make all of the findings required by
28 subdivision (a) of Section 366 in either of the following
29 circumstances:

30 (1) The minor has been taken from the custody of his or her
31 parent or guardian and has been living in an out-of-home
32 placement pursuant to Section 319.

33 (2) The minor has been living in a voluntary out-of-home
34 placement pursuant to Section 16507.4.

35 SEC. 49. Section 361.31 is added to the Welfare and
36 Institutions Code, to read:

37 361.31. (a) In any case in which an Indian child is removed
38 from the physical custody of his or her parents or Indian
39 custodian pursuant to Section 361, the child's placement shall
40 comply with this section.

(b) Any emergency removal, foster care, or guardianship placement of an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to the child's placement with one of the following, in descending priority order:

(1) A member of the child's extended family, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home licensed, approved, or specified by the child's tribe.

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In any adoptive placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

(1) A member of the child's extended family, as defined in Section 1903 of Title 25 of the United States Code.

(2) Other members of the child's tribe.

(3) Another Indian family.

(4) A non-Indian family approved by the Indian child's tribe.

(d) Notwithstanding the placement preferences listed in subdivisions (b) and (c), if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe or in the agreement.

(e) Where appropriate, the placement preference of the Indian child or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement. Unless there is clear and convincing evidence that placement within the order of preference applicable under subdivision (b), (c) or (d) would be harmful to the Indian child, consideration of the preference of the Indian child or parent or a parent's request for anonymity shall not be a basis for placing an Indian child outside of the applicable order of preference.

1 (f) The prevailing social and cultural standards of the Indian
2 community in which the parent or extended family members of
3 an Indian child reside, or with which the parent or extended
4 family members maintain social and cultural ties, or the
5 prevailing social and cultural standards of the Indian child's tribe
6 shall be applied in meeting the placement preferences under this
7 section. A determination of the applicable prevailing social and
8 cultural standards shall be confirmed by the testimony or other
9 documented support of qualified expert witnesses.

10 (g) Any person or court involved in the placement of an Indian
11 child shall use the services of the Indian child's tribe, whenever
12 available through the tribe, in seeking to secure placement within
13 the order of placement preference established in this section and
14 in the supervision of the placement.

15 (h) Except as otherwise provided in subdivision (e), the court
16 may only determine that good cause exists not to follow
17 placement preferences applicable under subdivision (b), (c) or (d)
18 when there is clear and convincing evidence that a diligent search
19 has been completed for families meeting the preference criteria
20 and no suitable placement is available. When no preferred
21 placement is available, active efforts shall be made to place the
22 child with a family committed to enabling the child to have
23 extended family visitation and participation in the cultural and
24 ceremonial events of the child's tribe.

25 (i) A record of each foster care placement or adoptive
26 placement of an Indian child shall be maintained in perpetuity by
27 the State Department of Social Services. The record shall
28 document the active efforts to comply with the applicable order
29 of preference specified in this section.

30 SEC. 50. Section 361.4 of the Welfare and Institutions Code
31 is amended to read:

32 361.4. (a) Prior to placing a child in the home of a relative, or
33 the home of any prospective guardian or other person who is not
34 a licensed or certified foster parent, the county social worker
35 shall visit the home to ascertain the appropriateness of the
36 placement.

37 (b) Whenever a child may be placed in the home of a relative,
38 or the home of any prospective guardian or other person who is
39 not a licensed or certified foster parent, the court or county social
40 worker placing the child shall cause a state and federal level

1 criminal records check to be conducted by an appropriate
2 governmental agency through the California Law Enforcement
3 Telecommunications System (CLETS) pursuant to Section
4 16504.5. The criminal records check shall be conducted with
5 regard to all persons over the age of 18 years living in the home,
6 and on any other person over the age of 18 years, other than
7 professionals providing professional services to the child, known
8 to the placing entity who may have significant contact with the
9 child, including any person who has a familial or intimate
10 relationship with any person living in the home. A criminal
11 records check may be conducted pursuant to this section on any
12 person over the age of 14 years living in the home who the
13 county social worker believes may have a criminal record.
14 Within five judicial days following the criminal records check
15 conducted through the California Law Enforcement
16 Telecommunications System, the social worker shall ensure that
17 a fingerprint clearance check of the relative and any other person
18 whose criminal record was obtained pursuant to this subdivision
19 is initiated through the Department of Justice to ensure the
20 accuracy of the criminal records check conducted through the
21 California Law Enforcement Telecommunications System and
22 shall review the results of any criminal records check to assess
23 the safety of the home. The Department of Justice shall forward
24 fingerprint requests for federal level criminal history information
25 to the Federal Bureau of Investigation pursuant to this section.

26 (c) Whenever a child may be placed in the home of a relative,
27 or a prospective guardian or other person who is not a licensed or
28 certified foster parent, the county social worker shall cause a
29 check of the Child Abuse Index pursuant to subdivision (a) of
30 Section 11170 of the Penal Code to be requested from the
31 Department of Justice. The Child Abuse Index check shall be
32 conducted on all persons over the age of 18 years living in the
33 home.

34 (d) (1) If the criminal records check indicates that the person
35 has no criminal record, the county social worker and court may
36 consider the home of the relative, prospective guardian, or other
37 person who is not a licensed or certified foster parent for
38 placement of a child.

39 (2) If the criminal records check indicates that the person has
40 been convicted of a crime that would preclude licensure under

1 Section 1522 of the Health and Safety Code, the child may not be
2 placed in the home, unless a criminal records exemption has been
3 granted by the county, based on substantial and convincing
4 evidence to support a reasonable belief that the person with the
5 criminal conviction is of such good character as to justify the
6 placement and not present a risk of harm to the child pursuant to
7 paragraph (3).

8 (3) (A) A county may issue a criminal records exemption only
9 if that county has been granted permission by the Director of
10 Social Services to issue criminal records exemptions. The county
11 may file a request with the Director of Social Services seeking
12 permission for the county to establish a procedure to evaluate and
13 grant appropriate individual criminal records exemptions for
14 persons described in subdivision (b). The director shall grant or
15 deny the county's request within 14 days of receipt. The county
16 shall evaluate individual criminal records in accordance with the
17 standards and limitations set forth in paragraph (1) of subdivision
18 (g) of Section 1522 of the Health and Safety Code, and in no
19 event shall the county place a child in the home of a person who
20 is ineligible for an exemption under that provision.

21 (B) The department shall monitor county implementation of
22 the authority to grant an exemption under this paragraph to
23 ensure that the county evaluates individual criminal records and
24 allows or disallows placements according to the standards set
25 forth in paragraph (1) of subdivision (g) of Section 1522 of the
26 Health and Safety Code.

27 (4) The department shall conduct an evaluation of the
28 implementation of paragraph (3) through random sampling of
29 county exemption decisions.

30 (5) The State Department of Social Services shall not evaluate
31 or grant criminal record exemption requests for persons
32 described in subdivision (b), unless the exemption request is
33 made by an Indian tribe pursuant to subdivision (f).

34 (6) If a county has not requested, or has not been granted,
35 permission by the State Department of Social Services to
36 establish a procedure to evaluate and grant criminal records
37 exemptions, the county may not place a child into the home of a
38 person described in subdivision (b) if any person residing in the
39 home has been convicted of a crime other than a minor traffic
40 violation, except as provided in subdivision (f).

1 (e) Nothing in this section shall preclude a county from
2 conducting a criminal background check that the county is
3 otherwise authorized to conduct using fingerprints.

4 (f) Upon request from an Indian tribe, the State Department of
5 Social Services shall evaluate an exemption request, if needed, to
6 allow placement into an Indian home that the tribe has designated
7 for placement under the Indian Child Welfare Act (25 U.S.C.
8 Sec. 1901 et seq.) that would otherwise be barred under this
9 section. However, if the county with jurisdiction over the child
10 that is the subject of the tribe's request has established an
11 approved procedure pursuant to paragraph (3) of subdivision (d),
12 the tribe may request that the county evaluate the exemption
13 request. Once a tribe has elected to have the exemption request
14 reviewed by either the State Department of Social Services or the
15 county, the exemption decision may only be made by that entity.
16 Nothing in this subdivision limits the duty of a county social
17 worker to evaluate the home for placement or to gather
18 information needed to evaluate an exemption request.

19 ~~(g) This section shall remain in effect only until January 1,~~
20 ~~2010, and as of that date is repealed, unless a later enacted~~
21 ~~statute, that is enacted before January 1, 2010, deletes or extends~~
22 ~~that date.~~

23 SEC. 51. Section 361.7 is added to the Welfare and
24 Institutions Code, to read:

25 361.7. (a) Notwithstanding Section 361.5, a party seeking an
26 involuntary foster care placement of, or termination of parental
27 rights over, an Indian child shall provide evidence to the court
28 that active efforts have been made to provide remedial services
29 and rehabilitative programs designed to prevent the breakup of
30 the Indian family and that these efforts have proved unsuccessful.
31 The court shall not order the placement or termination, unless the
32 evidence of active efforts shows there has been a vigorous and
33 concerted level of casework beyond the level that typically
34 constitutes reasonable efforts as defined in Section 727.4.
35 Reasonable efforts shall not be construed to be active efforts. The
36 active efforts shall be made in a manner that takes into account
37 the prevailing social and cultural values, conditions, and way of
38 life of the Indian child's tribe. Active efforts shall utilize the
39 available resources of the Indian child's extended family, tribe,
40 tribal and other Indian social service agencies, and individual

1 Indian caregivers. Active efforts shall include, but are not limited
2 to, all of the following:

3 (1) A request to the Indian child's tribe to convene traditional
4 and customary support and resolution actions or services.

5 (2) Identification and participation of tribally designated
6 representatives at the earliest point.

7 (3) Consultation with extended family members to identify
8 family structure and family support services that may be
9 provided by extended family members.

10 (4) Frequent visitation in the Indian child's home and the
11 homes of the child's extended family members.

12 (5) Exhaustion of all tribally appropriate family preservation
13 alternatives.

14 (6) Identification and provision of information to the child's
15 family concerning community resources that may be able to offer
16 housing, financial, and transportation assistance and actively
17 assisting the family in accessing the community resources.

18 (b) No foster care placement or guardianship may be ordered
19 in the proceeding in the absence of a determination, supported by
20 clear and convincing evidence, including testimony of a qualified
21 expert witness, as defined in Section 224.6, that the continued
22 custody of the child by the parent or Indian custodian is likely to
23 result in serious emotional or physical damage to the child.

24 SEC. 52. Section 366 of the Welfare and Institutions Code is
25 amended to read:

26 366. (a) (1) The status of every dependent child in foster care
27 shall be reviewed periodically as determined by the court but no
28 less frequently than once every six months, as calculated from
29 the date of the original dispositional hearing, until the hearing
30 described in Section 366.26 is completed. The court shall
31 consider the safety of the child and shall determine all of the
32 following:

33 (A) The continuing necessity for and appropriateness of the
34 placement.

35 (B) The extent of the agency's compliance with the case plan
36 in making reasonable efforts, *or, in the case of an Indian child,*
37 *active efforts as defined in Section 361.7,* to return the child to a
38 safe home and to complete any steps necessary to finalize the
39 permanent placement of the child, including efforts to maintain
40 relationships between a child who is 10 years of age or older who

1 is placed in a group home for six months or longer from the date
2 the child entered foster care, and individuals other than the
3 child's siblings who are important to the child, consistent with
4 the child's best interests.

5 (C) Whether there should be any limitation on the right of the
6 parent or guardian to make educational decisions for the child.
7 That limitation shall be specifically addressed in the court order
8 and may not exceed those necessary to protect the child.
9 Whenever the court specifically limits the right of the parent or
10 guardian to make educational decisions for the child, the court
11 shall at the same time appoint a responsible adult to make
12 educational decisions for the child pursuant to Section 361.

13 (D) (i) Whether the child has other siblings under the court's
14 jurisdiction, and, if any siblings exist, all of the following:

15 (I) The nature of the relationship between the child and his or
16 her siblings.

17 (II) The appropriateness of developing or maintaining the
18 sibling relationships pursuant to Section 16002.

19 (III) If the siblings are not placed together in the same home,
20 why the siblings are not placed together and what efforts are
21 being made to place the siblings together, or why those efforts
22 are not appropriate.

23 (IV) If the siblings are not placed together, the frequency and
24 nature of the visits between siblings.

25 (V) The impact of the sibling relationships on the child's
26 placement and planning for legal permanence.

27 (VI) The continuing need to suspend sibling interaction, if
28 applicable, pursuant to subdivision (c) of Section 16002.

29 (ii) The factors the court may consider in making a
30 determination regarding the nature of the child's sibling
31 relationships may include, but are not limited to, whether the
32 siblings were raised together in the same home, whether the
33 siblings have shared significant common experiences or have
34 existing close and strong bonds, whether either sibling expresses
35 a desire to visit or live with his or her sibling, as applicable, and
36 whether ongoing contact is in the child's best emotional interests.

37 (E) The extent of progress which has been made toward
38 alleviating or mitigating the causes necessitating placement in
39 foster care.

1 (2) The court shall project a likely date by which the child may
2 be returned to and safely maintained in the home or placed for
3 adoption, legal guardianship, or in another planned permanent
4 living arrangement.

5 (b) Subsequent to the hearing, periodic reviews of each child
6 in foster care shall be conducted pursuant to the requirements of
7 Sections 366.3 and 16503.

8 (c) If the child has been placed out of state, each review
9 described in subdivision (a) and any reviews conducted pursuant
10 to Sections 366.3 and 16503 shall also address whether the
11 out-of-state placement continues to be the most appropriate
12 placement selection and in the best interests of the child.

13 (d) A child may not be placed in an out-of-state group home,
14 or remain in an out-of-state group home, unless the group home
15 is in compliance with Section 7911.1 of the Family Code.

16 SEC. 53. Section 366.26 of the Welfare and Institutions Code
17 is amended to read:

18 366.26. (a) This section applies to children who are adjudged
19 dependent children of the juvenile court pursuant to subdivision
20 (c) of Section 360. The procedures specified herein are the
21 exclusive procedures for conducting these hearings; Part 2
22 (commencing with Section 3020) of Division 8 of the Family
23 Code is not applicable to these proceedings. Section 8714.7 of
24 the Family Code is applicable and available to all dependent
25 children meeting the requirements of that section, if the
26 postadoption contact agreement has been entered into
27 voluntarily. For children who are adjudged dependent children of
28 the juvenile court pursuant to subdivision (c) of Section 360, this
29 section and Sections 8604, 8605, 8606, and 8700 of the Family
30 Code and Chapter 5 (commencing with Section 7660) of Part 3
31 of Division 12 of the Family Code specify the exclusive
32 procedures for permanently terminating parental rights with
33 regard to, or establishing legal guardianship of, the child while
34 the child is a dependent child of the juvenile court.

35 (b) At the hearing, that shall be held in juvenile court for all
36 children who are dependents of the juvenile court, the court, in
37 order to provide stable, permanent homes for these children, shall
38 review the report as specified in Section 361.5, 366.21, or
39 366.22, shall indicate that the court has read and considered it,
40 shall receive other evidence that the parties may present, and then

1 shall make findings and orders in the following order of
2 preference:

3 (1) Terminate the rights of the parent or parents and order that
4 the child be placed for adoption and, upon the filing of a petition
5 for adoption in the juvenile court, order that a hearing be set. The
6 court shall proceed with the adoption after the appellate rights of
7 the natural parents have been exhausted.

8 (2) On making a finding under paragraph (3) of subdivision
9 (c), identify adoption as the permanent placement goal and order
10 that efforts be made to locate an appropriate adoptive family for
11 the child within a period not to exceed 180 days.

12 (3) Appoint a legal guardian for the child and order that letters
13 of guardianship issue.

14 (4) Order that the child be placed in long-term foster care,
15 subject to the periodic review of the juvenile court under Section
16 366.3.

17 In choosing among the above alternatives the court shall
18 proceed pursuant to subdivision (c).

19 (c) (1) If the court determines, based on the assessment
20 provided as ordered under subdivision (i) of Section 366.21 or
21 subdivision (b) of Section 366.22, and any other relevant
22 evidence, by a clear and convincing standard, that it is likely the
23 child will be adopted, the court shall terminate parental rights and
24 order the child placed for adoption. The fact that the child is not
25 yet placed in a preadoptive home nor with a relative or foster
26 family who is prepared to adopt the child, shall not constitute a
27 basis for the court to conclude that it is not likely the child will
28 be adopted. A finding under subdivision (b) or paragraph (1) of
29 subdivision (e) of Section 361.5 that reunification services shall
30 not be offered, under subdivision (e) of Section 366.21 that the
31 whereabouts of a parent have been unknown for six months or
32 that the parent has failed to visit or contact the child for six
33 months or that the parent has been convicted of a felony
34 indicating parental unfitness, or, under Section 366.21 or 366.22,
35 that the court has continued to remove the child from the custody
36 of the parent or guardian and has terminated reunification
37 services, shall constitute a sufficient basis for termination of
38 parental rights unless the court finds a compelling reason for
39 determining that termination would be detrimental to the child
40 due to one or more of the following circumstances:

1 (A) The parents or guardians have maintained regular
2 visitation and contact with the child and the child would benefit
3 from continuing the relationship. *“Guardians” shall include an*
4 *“Indian custodian” as defined in the Indian Child Welfare Act*
5 *(25 U.S.C. 1903(6)).*

6 (B) A child 12 years of age or older objects to termination of
7 parental rights.

8 (C) The child is placed in a residential treatment facility,
9 adoption is unlikely or undesirable, and continuation of parental
10 rights will not prevent finding the child a permanent family
11 placement if the parents cannot resume custody when residential
12 care is no longer needed.

13 (D) The child is living with a ~~relative or nonrelative~~ foster
14 parent who is unable or unwilling to adopt the child because of
15 exceptional circumstances, that do not include an unwillingness
16 to accept legal or financial responsibility for the child, but who is
17 willing and capable of providing the child with a stable and
18 permanent environment and the removal of the child from the
19 physical custody of his or her ~~relative or~~ foster parent would be
20 detrimental to the emotional well-being of the child. This
21 subparagraph does not apply to any child who is ~~living with a~~
22 ~~nonrelative and who is~~ either (i) under six years of age or (ii) a
23 member of a sibling group where at least one child is under six
24 years of age and the siblings are, or should be, permanently
25 placed together.

26 (E) There would be substantial interference with a child’s
27 sibling relationship, taking into consideration the nature and
28 extent of the relationship, including, but not limited to, whether
29 the child was raised with a sibling in the same home, whether the
30 child shared significant common experiences or has existing
31 close and strong bonds with a sibling, and whether ongoing
32 contact is in the child’s best interest, including the child’s
33 long-term emotional interest, as compared to the benefit of legal
34 permanence through adoption. *When a child’s removal and*
35 *subsequent lack of contact with siblings has prevented the child*
36 *from establishing or maintaining sibling relationships, the court*
37 *shall consider the potential benefit of establishing and*
38 *maintaining sibling relationships when applying this*
39 *subparagraph.*

1 (F) *The child is living with a relative who is willing and*
2 *capable of providing the child with a stable and permanent*
3 *environment and the removal of the child from the physical*
4 *custody of his or her relative would be detrimental to the*
5 *emotional well-being of the child. “Relative” shall include an*
6 *“extended family member” as defined in the Indian Child*
7 *Welfare Act (25 U.S.C. Sec. 1903(2)).*

8 (G) *The child is an Indian child and there is a compelling*
9 *reason for determining that termination of parental rights would*
10 *not be in the best interest of the child, including, but not limited*
11 *to:*

12 (i) *Termination of parental rights would substantially interfere*
13 *with the child’s connection to his or her tribal community or the*
14 *child’s tribal membership rights.*

15 (ii) *The child’s tribe has identified guardianship, long-term*
16 *foster care with a fit and willing relative, or another planned*
17 *permanent living arrangement for the child.*

18 If the court finds that termination of parental rights would be
19 detrimental to the child pursuant to subparagraph (A), (B), (C),
20 (D), ~~or~~ (E), (F) or (G), it shall state its reasons in writing or on
21 the record.

22 (2) The court shall not terminate parental rights ~~if at~~ unless:

23 (A) ~~At each and every~~ hearing at which the court was required
24 to consider reasonable efforts or services, the court has found that
25 reasonable efforts were ~~not~~ made or that reasonable services were
26 ~~not~~ offered or provided.

27 (B) *In the case of an Indian child:*

28 (i) *At the hearing terminating parental rights and at each*
29 *prior hearing at which the court was required to consider active*
30 *efforts or services the court has found, supported by clear and*
31 *convincing evidence, that active efforts were made in accordance*
32 *with Section 361.7.*

33 (ii) *The court has made a determination at the hearing*
34 *terminating parental rights, supported by evidence beyond a*
35 *reasonable doubt, including testimony of one or more “qualified*
36 *expert witnesses” as defined in Section 224.6, that the continued*
37 *custody of the child by the parent is likely to result in serious*
38 *emotional or physical damage to the child.*

39 (3) If the court finds that termination of parental rights would
40 not be detrimental to the child pursuant to paragraph (1) and that

1 the child has a probability for adoption but is difficult to place for
2 adoption and there is no identified or available prospective
3 adoptive parent, the court may identify adoption as the
4 permanent placement goal and without terminating parental
5 rights, order that efforts be made to locate an appropriate
6 adoptive family for the child within a period not to exceed 180
7 days. During this 180-day period, the public agency responsible
8 for seeking adoptive parents for each child shall, to the extent
9 possible, ask each child who is 10 years of age or older who is
10 placed in a group home for six months or longer from the date
11 the child entered foster care, to identify any individuals, other
12 than the child's siblings, who are important to the child, in order
13 to identify potential adoptive parents. The public agency may ask
14 any other child to provide that information, as appropriate.
15 During the 180-day period, the public agency shall, to the extent
16 possible, contact other private and public adoption agencies
17 regarding the availability of the child for adoption. During the
18 180-day period, the public agency shall conduct the search for
19 adoptive parents in the same manner as prescribed for children in
20 Sections 8708 and 8709 of the Family Code. At the expiration of
21 this period, another hearing shall be held and the court shall
22 proceed pursuant to paragraph (1) or (3) of subdivision (b). For
23 purposes of this section, a child may only be found to be difficult
24 to place for adoption if there is no identified or available
25 prospective adoptive parent for the child because of the child's
26 membership in a sibling group, or the presence of a diagnosed
27 medical, physical, or mental handicap, or the child is the age of
28 seven years or more.

29 (4) (A) If the court finds that adoption of the child or
30 termination of parental rights is not in the best interest of the
31 child, because one of the conditions in subparagraph (A), (B),
32 (C), (D), ~~or~~ (E), (F), or (G) of paragraph (1) or in paragraph (2)
33 applies, the court shall either order that the present caretakers or
34 other appropriate persons shall become legal guardians of the
35 child or order that the child remain in long-term foster care.
36 Legal guardianship shall be considered before long-term foster
37 care, if it is in the best interests of the child and if a suitable
38 guardian can be found. A child who is 10 years of age or older
39 who is placed in a group home for six months or longer from the
40 date the child entered foster care, shall be asked to identify any

1 individuals, other than the child's siblings, who are important to
2 the child, in order to identify potential guardians. The agency
3 may ask any other child to provide that information, as
4 appropriate.

5 (B) If the child is living with a relative or a foster parent who
6 is willing and capable of providing a stable and permanent
7 environment, but not willing to become a legal guardian, the
8 child shall not be removed from the home if the court finds the
9 removal would be seriously detrimental to the emotional
10 well-being of the child because the child has substantial
11 psychological ties to the relative caretaker or foster parents.

12 (C) The court shall also make an order for visitation with the
13 parents or guardians unless the court finds by a preponderance of
14 the evidence that the visitation would be detrimental to the
15 physical or emotional well-being of the child.

16 (5) If the court finds that the child should not be placed for
17 adoption, that legal guardianship shall not be established, and
18 that there are no suitable foster parents except exclusive-use
19 homes available to provide the child with a stable and permanent
20 environment, the court may order the care, custody, and control
21 of the child transferred from the county welfare department to a
22 licensed foster family agency. The court shall consider the
23 written recommendation of the county welfare director regarding
24 the suitability of the transfer. The transfer shall be subject to
25 further court orders.

26 The licensed foster family agency shall place the child in a
27 suitable licensed or exclusive-use home that has been certified by
28 the agency as meeting licensing standards. The licensed foster
29 family agency shall be responsible for supporting the child and
30 providing appropriate services to the child, including those
31 services ordered by the court. Responsibility for the support of
32 the child shall not, in and of itself, create liability on the part of
33 the foster family agency to third persons injured by the child.
34 Those children whose care, custody, and control are transferred
35 to a foster family agency shall not be eligible for foster care
36 maintenance payments or child welfare services, except for
37 emergency response services pursuant to Section 16504.

38 (d) The proceeding for the appointment of a guardian for a
39 child who is a dependent of the juvenile court shall be in the
40 juvenile court. If the court finds pursuant to this section that legal

1 guardianship is the appropriate permanent plan, it shall appoint
2 the legal guardian and issue letters of guardianship. The
3 assessment prepared pursuant to subdivision (g) of Section 361.5,
4 subdivision (i) of Section 366.21, and subdivision (b) of Section
5 366.22 shall be read and considered by the court prior to the
6 appointment, and this shall be reflected in the minutes of the
7 court. The person preparing the assessment may be called and
8 examined by any party to the proceeding.

9 (e) The proceeding for the adoption of a child who is a
10 dependent of the juvenile court shall be in the juvenile court if
11 the court finds pursuant to this section that adoption is the
12 appropriate permanent plan and the petition for adoption is filed
13 in the juvenile court. Upon the filing of a petition for adoption,
14 the juvenile court shall order that an adoption hearing be set. The
15 court shall proceed with the adoption after the appellate rights of
16 the natural parents have been exhausted. The full report required
17 by Section 8715 of the Family Code shall be read and considered
18 by the court prior to the adoption and this shall be reflected in the
19 minutes of the court. The person preparing the report may be
20 called and examined by any party to the proceeding. It is the
21 intent of the Legislature, pursuant to this subdivision, to give
22 potential adoptive parents the option of filing in the juvenile
23 court the petition for the adoption of a child who is a dependent
24 of the juvenile court. Nothing in this section is intended to
25 prevent the filing of a petition for adoption in any other court as
26 permitted by law, instead of in the juvenile court.

27 (f) At the beginning of any proceeding pursuant to this section,
28 if the child or the parents are not being represented by previously
29 retained or appointed counsel, the court shall proceed as follows:

30 (1) In accordance with subdivision (c) of Section 317, if a
31 child before the court is without counsel, the court shall appoint
32 counsel unless the court finds that the child would not benefit
33 from the appointment of counsel. The court shall state on the
34 record its reasons for that finding.

35 (2) If a parent appears without counsel and is unable to afford
36 counsel, the court shall appoint counsel for the parent, unless this
37 representation is knowingly and intelligently waived. The same
38 counsel shall not be appointed to represent both the child and his
39 or her parent. The public defender or private counsel may be
40 appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who

1 have been served with citation by publication or otherwise as
2 provided in this chapter. After making the order, the court shall
3 have no power to set aside, change, or modify it, but nothing in
4 this section shall be construed to limit the right to appeal the
5 order.

6 (j) If the court, by order or judgment, declares the child free
7 from the custody and control of both parents, or one parent if the
8 other does not have custody and control, the court shall at the
9 same time order the child referred to the State Department of
10 Social Services or a licensed adoption agency for adoptive
11 placement by the agency. However, a petition for adoption may
12 not be granted until the appellate rights of the natural parents
13 have been exhausted. The State Department of Social Services or
14 licensed adoption agency shall be responsible for the custody and
15 supervision of the child and shall be entitled to the exclusive care
16 and control of the child at all times until a petition for adoption is
17 granted. With the consent of the agency, the court may appoint a
18 guardian of the child, who shall serve until the child is adopted.

19 (k) Notwithstanding any other provision of law, the
20 application of any person who, as a relative caretaker or foster
21 parent, has cared for a dependent child for whom the court has
22 approved a permanent plan for adoption, or who has been freed
23 for adoption, shall be given preference with respect to that child
24 over all other applications for adoptive placement if the agency
25 making the placement determines that the child has substantial
26 emotional ties to the relative caretaker or foster parent and
27 removal from the relative caretaker or foster parent would be
28 seriously detrimental to the child's emotional well-being.

29 As used in this subdivision, "preference" means that the
30 application shall be processed and, if satisfactory, the family
31 study shall be completed before the processing of the application
32 of any other person for the adoptive placement of the child.

33 (l) (1) An order by the court that a hearing pursuant to this
34 section be held is not appealable at any time unless all of the
35 following applies:

36 (A) A petition for extraordinary writ review was filed in a
37 timely manner.

38 (B) The petition substantively addressed the specific issues to
39 be challenged and supported that challenge by an adequate
40 record.

1 (C) The petition for extraordinary writ review was summarily
2 denied or otherwise not decided on the merits.

3 (2) Failure to file a petition for extraordinary writ review
4 within the period specified by rule, to substantively address the
5 specific issues challenged, or to support that challenge by an
6 adequate record shall preclude subsequent review by appeal of
7 the findings and orders made pursuant to this section.

8 (3) The Judicial Council shall adopt rules of court, effective
9 January 1, 1995, to ensure all of the following:

10 (A) A trial court, after issuance of an order directing a hearing
11 pursuant to this section be held, shall advise all parties of the
12 requirement of filing a petition for extraordinary writ review as
13 set forth in this subdivision in order to preserve any right to
14 appeal in these issues. This notice shall be made orally to a party
15 if the party is present at the time of the making of the order or by
16 first-class mail by the clerk of the court to the last known address
17 of a party not present at the time of the making of the order.

18 (B) The prompt transmittal of the records from the trial court
19 to the appellate court.

20 (C) That adequate time requirements for counsel and court
21 personnel exist to implement the objective of this subdivision.

22 (D) That the parent or guardian, or their trial counsel or other
23 counsel, is charged with the responsibility of filing a petition for
24 extraordinary writ relief pursuant to this subdivision.

25 (4) The intent of this subdivision is to do both of the
26 following:

27 (A) Make every reasonable attempt to achieve a substantive
28 and meritorious review by the appellate court within the time
29 specified in Sections 366.21 and 366.22 for holding a hearing
30 pursuant to this section.

31 (B) Encourage the appellate court to determine all writ
32 petitions filed pursuant to this subdivision on their merits.

33 (5) This subdivision shall only apply to cases in which an
34 order to set a hearing pursuant to this section is issued on or after
35 January 1, 1995.

36 (m) Except for subdivision (j), this section shall also apply to
37 minors adjudged wards pursuant to Section 727.31.

38 SEC. 54. Section 727.4 of the Welfare and Institutions Code
39 is amended to read:

1 727.4. (a) (1) Notice of any hearing pursuant to Section 727,
2 727.2, or 727.3 shall be mailed by the probation officer to the
3 minor, the minor's parent or guardian, any adult provider of care
4 to the minor including, but not limited to, foster parents, relative
5 caregivers, preadoptive parents, community care facility, or
6 foster family agency, and to the counsel of record if the counsel
7 of record was not present at the time that the hearing was set by
8 the court, by first-class mail addressed to the last known address
9 of the person to be notified, or shall be personally served on
10 those persons, not earlier than 30 days nor later than 15 days
11 preceding the date of the hearing. The notice shall contain a
12 statement regarding the nature of the status review or
13 permanency planning hearing and any change in the custody or
14 status of the minor being recommended by the probation
15 department. The notice shall also include a statement informing
16 the foster parents, relative caregivers, or preadoptive parents that
17 he or she may attend all hearings or may submit any information
18 he or she deems relevant to the court in writing. The foster
19 parents, relative caregiver, and preadoptive parents are entitled to
20 notice and opportunity to be heard but need not be made parties
21 to the proceedings. Proof of notice shall be filed with the court.

22 (2) *If the court or probation officer knows or has reason to*
23 *know that the minor may be an Indian child, any notice sent*
24 *under this section shall comply with the requirements of Section*
25 *224.2.*

26 (b) At least 10 calendar days prior to each status review and
27 permanency planning hearing, after the hearing during which the
28 court orders that the care, custody and control of the minor to be
29 under the supervision of the probation officer for placement
30 pursuant to subdivision (a) of Section 727, the probation officer
31 shall file a social study report with the court, pursuant to the
32 requirements listed in Section 706.5.

33 (c) The probation department shall inform the minor, the
34 minor's parent or guardian, and all counsel of record that a copy
35 of the social study prepared for the hearing will be available 10
36 days prior to the hearing and may be obtained from the probation
37 officer.

38 (d) As used in Article 15 (commencing with Section 625) to
39 Article 18 (commencing with Section 725), inclusive:

(1) “Foster care” means residential care provided in any of the settings described in Section 11402.

(2) “At risk of entering foster care” means that conditions within a minor’s family may necessitate his or her entry into foster care unless those conditions are resolved.

(3) “Preadoptive parent” means a licensed foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency.

(4) “Date of entry into foster care” means the date that is 60 days after the date on which the minor was removed from his or her home, unless one of the exceptions below applies:

(A) If the minor is detained pending foster care placement, and remains detained for more than 60 days, then the date of entry into foster care means the date the court adjudges the minor a ward and orders the minor placed in foster care under the supervision of the probation officer.

(B) If, before the minor is placed in foster care, the minor is committed to a ranch, camp, school, or other institution pending placement, and remains in that facility for more than 60 days, then the “date of entry into foster care” is the date the minor is physically placed in foster care.

(C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the “date of entry into foster care” is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home.

(5) “Reasonable efforts” means:

(A) Efforts made to prevent or eliminate the need for removing the minor from the minor’s home;

(B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services; ~~and~~.

(C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor.

(D) *In child custody proceedings involving an Indian child, shall also include “active efforts” as defined in Section 361.7.*

1 (6) “Relative” means an adult who is related to the minor by
2 blood, adoption, or affinity within the fifth degree of kinship
3 including stepparents, stepsiblings, and all relatives whose status
4 is preceded by the words “great,” “great-great,” “grand,” or the
5 spouse of any of these persons even if the marriage was
6 terminated by death or dissolution. “Relative” shall also include
7 an “extended family member” as defined in the Indian Child
8 Welfare Act (25 U.S.C. Sec. 1903(2)).

9 (7) “Hearing” means a noticed proceeding with findings and
10 orders that are made on a case-by-case basis, heard by either of
11 the following:

12 (A) A judicial officer, in a courtroom, recorded by a court
13 reporter.

14 (B) An administrative panel, provided that the hearing is a
15 status review hearing and that the administrative panel meets the
16 following conditions:

17 (i) The administrative review shall be open to participation by
18 the minor and parents or legal guardians and all those persons
19 entitled to notice under subdivision (a).

20 (ii) The minor and his or her parents or legal guardians receive
21 proper notice as required in subdivision (a).

22 (iii) The administrative review panel is composed of persons
23 appointed by the presiding judge of the juvenile court, the
24 membership of which shall include at least one person who is not
25 responsible for the case management of, or delivery of services
26 to, the minor or the parents who are the subjects of the review.

27 (iv) The findings of the administrative review panel shall be
28 submitted to the juvenile court for the court’s approval and shall
29 become part of the official court record.

30 SEC. 55. If the Commission on State Mandates determines
31 that this act contains costs mandated by the state, reimbursement
32 to local agencies and school districts for those costs shall be
33 made pursuant to Part 7 (commencing with Section 17500) of
34 Division 4 of Title 2 of the Government Code.